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Legislative Assembly of Ontario

First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38^e législature

Official Report of Debates (Hansard)

Thursday 4 December 2003

Journal des débats (Hansard)

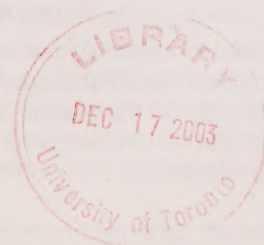
Jeudi 4 décembre 2003

Standing committee on the Legislative Assembly

Organization

Comité permanent de l'Assemblée législative

Organisation



Chair: Linda Jeffrey
Clerk: Douglas Arnott

Présidente : Linda Jeffrey
Greffier : Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 4 December 2003

Jeudi 4 décembre 2003

The committee met at 16:02 in committee room 1.

ELECTION OF CHAIR

Clerk of the Committee (Mr Douglas Arnott): Honourable members, welcome to the standing committee on the Legislative Assembly. It is my duty to call upon you to elect a member as Chair of the committee. Are there any nominations, please?

Ms Kathleen O. Wynne (Don Valley West): I'd like to nominate Linda Jeffrey as Chair and Mario Racco as Vice-Chair.

Clerk of the Committee: It would be at this point just one nomination at a time.

Ms Wynne: I'd like to nominate Linda Jeffrey as Chair.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare Ms Jeffrey elected Chair.

ELECTION OF VICE-CHAIR

The Chair (Mrs Linda Jeffrey): Our first order of business is the election of a Vice-Chair. Are there any nominations?

Ms Wynne: I'd like to nominate Mario Racco as Vice-Chair.

The Chair: Any other nominations? I believe, Mr Racco, you are the Vice-Chair. Congratulations.

Mr Mario G. Racco (Thornhill): Thank you.

APPOINTMENT OF SUBCOMMITTEE

The Chair: We need an appointment of a subcommittee as our next item.

Ms Wynne: I'd like to move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or on the request of any member thereof, to consider and report to the committee on the business of the committee; and that the subcommittee be composed of the following members: the Chair as Chair, Mr Mario Sergio and Mr Hardeman; and that the presence of all members of the subcommittee is necessary to constitute a meeting.

The Chair: All those in favour? It's carried.

Committee, we have the offer of Mr Arnott to give us a short briefing. Would you care to have that happen now or would you prefer that at the next meeting?

Mr Mario Sergio (York West): We might as well do it now.

Clerk of the Committee: Members, I've placed before each of you a resource binder, which is a fairly complete overview of the recent work of the committee and the procedures that pertain to its work. I've also put at your place a copy of standing order 106, which is the basic term of reference of the committee, providing its mandate in several areas.

The committee is empowered either on its own initiative or at the request of the Speaker, or the direction of the House, to report to the House its observations on the standing orders and the procedures of the House and its committees. The committee also acts with oversight over the administration of the House and the provision of services to members. It also has a mandate to have oversight over the television broadcast system of the assembly. In addition, in the last Parliament it acquired a mandate, previously given to the standing committee on the Ombudsman, to have some oversight over the Ombudsman.

Over the course of the Parliament, the work of the committee can be considered to fall into four areas:

The committee may receive procedural referrals from the House. In the last Parliament, a major referral was to examine measures that would enhance the role of private members. The committee did produce a major report on that, which I will distribute to your offices.

The second category of business that the committee considers would be bills. That may be bills that would relate either to the Elections Act, or members' expenses or really to any matter that the committee is sent by the House. The last such bill was a private member's public bill: An Act to honour firefighters who have died in the line of duty.

The third area would be members' services. Some of the issues that the committee has looked at over the years: the television broadcast system, decorum in the House, the use of computers in the House, restoration of the Legislative Building and, finally, the committee also hears from time to time from the Speaker or the Clerk of the House with respect to the administration of the House.

Lastly, there is the additional mandate the committee was given with respect to the Ombudsman. It has been the case that the committee has met with the Ombudsman after the tabling of his or her annual report.

With the committee today are two other staff members who assist the committee: Andrew McNaught, immediately to the left of the Chair, is from the legislative research service. He does much of the research for the committee. Peter Sibenik, who is procedural clerk, research, from the journals and procedural research branch, is assigned to the committee whenever it is dealing with procedural issues. He assists the committee at that time. If either Andrew or Peter has anything to add to the briefing, I'm sure we would all be prepared to answer members' questions as well.

The Chair: Any questions?

Mr Norm Miller (Parry Sound-Muskoka): Can this committee change the standing orders?

Clerk of the Committee: The committee is an advisory committee in that it can consider those areas and then report to the House its recommendations. It's always the House that makes decisions on its governance, including its standing orders.

Mr Ernie Hardeman (Oxford): If it's a 30-minute bell, we can finish what we need to do here today before we go.

Mr Sergio: If I may, have the times that the committee will meet on a regular basis already been established, or will this be decided later on by the subcommittee?

The Chair: I believe it has been established that it's Thursday afternoons.

Mr Hardeman: It has already been established?

The Chair: Would the subcommittee meet at different times outside the Thursday afternoons?

Clerk of the Committee: Yes, subcommittees can meet at whatever time the Chair calls it.

Mr Sergio: At the call of the Chair.

Mr Hardeman: The clerk mentioned the fact that there was a report prepared on the role of the Legislative Assembly and the members. That was done, obviously, prior to the election and it will come to the committee, as you mentioned. I wonder, for the benefit of all those who were not on the Legislative Assembly committee, which I believe would be the whole committee, if we could redo the research to make sure we can justify, or that the conclusions reached in the report are in fact justified by, the things they saw when they visited those places they went to in order to get this information for the report.

Interjection.

The Chair: Are you having difficulty answering that question, Mr Hardeman?

Clerk of the Committee: The last committee was given a special mandate to undertake its research toward its report and it would require permission of the House to duplicate that itinerary.

Mr Hardeman: Thank you very much, Mr Clerk. I would suggest that that permission is likely not forthcoming.

The Chair: I think it would make for interesting reading. It's quite thick. I've already had a chance to start it.

Any other questions of staff? I have one question. It appears in past minutes that there has been an annual review of the broadcast services. Would that be something that this committee would do at the next meeting or something early in our mandate?

Clerk of the Committee: Certainly the committee could plan to do that perhaps through the recommendation of the subcommittee.

Mr Sergio: Is that something that this committee can initiate?

Clerk of the Committee: Yes.

The Chair: Any other questions? Would somebody move adjournment? We're adjourned.

The committee adjourned at 1613.

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Mrs Linda Jeffrey (Brampton Centre / -Centre L)

Vice-Chair / Vice-Président

Mr Mario G. Racco (Thornhill L)

Mrs Donna H. Cansfield (Etobicoke Centre / -Centre L)

Mr Ernie Hardeman (Oxford PC)

Mrs Linda Jeffrey (Brampton Centre / -Centre L)

Mr Jeff Leal (Peterborough PC)

Mr Rosario Marchese (Trinity-Spadina ND)

Mr Bill Mauro (Thunder Bay-Atikokan L)

Mr Norm Miller (Parry Sound-Muskoka PC)

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Clerk / Greffier

Mr Douglas Arnott

Staff / Personnel

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Research and Information Services

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Ombudsman Ontario

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Ombudsman Ontario



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Thursday 13 May 2004

Jeudi 13 mai 2004

The committee met at 1541 in committee room 1.

The Chair (Ms Linda Jeffrey): I'm going to call the meeting to order. We have quorum.

Committee, you have before you the agenda, you have the revised report of the subcommittee and you have, on my request, a report from Mr Philip Kaye with regard to the Ombudsman's reporting relationship. It became apparent when we were having our tour the other day that people weren't exactly clear about the reporting relationship, so I asked him to put this together to assist us in understanding it, and it might help if you have questions for the Ombudsman later on.

Our agenda today has four items on it, and I would ask, with your indulgence, that we deal with items 2, 3 and 4 prior to the Ombudsman's presentation to us. If we could deal with the other three items on our agenda—item 2 might have some time pressures associated with it, so if we were to deal with item 2 earlier that would assist us in getting some business done.

SUBCOMMITTEE REPORT

Mr Jeff Leal (Peterborough): I'll move the report of the subcommittee at its meeting held Monday, May 10, 2004.

The Chair: Can I explain to you why you have a revised document in front of you? We've had a couple of subcommittee meetings—just so I explain to everybody, because there are some subs here today. There are a couple of contentious issues in the subcommittee meeting minutes.

One of the issues is with regard to where the subcommittee meet. Originally, we started out with Milton and then Sarnia, and then the subcommittee subsequently decided to do Sarnia and then Milton. There was some discussion about another location.

The other issue is item 14 in the subcommittee minutes. That's the only other change, which is with regard to the Minister of the Environment being invited to make an opening statement. We were originally talking about it at the commencement of the clause-by-clause. The revised minutes indicate that she be invited to make a statement at the commencement of the public hearings. So that's the other change.

Mr Bruce Crozier (Essex): Just a comment. You said there's some disagreement. I would move that the subcommittee minutes be amended to read, in number 1, that

the committee meet in Windsor on Thursday, May 20. I understand that's been agreed to.

The Chair: Yes.

Mr Crozier: So I would make that motion. Then I have a comment about the minister's attendance. Well, I'll say it now. The minister will make herself available in Windsor at that meeting, not in the morning, but in the afternoon.

Mr Ernie Hardeman (Oxford): First of all, I just want to point out a correction. There was absolutely no mention of the location change in the revised minutes. So when you spoke of the revised minutes from the committee being different, I couldn't find that. The revised report that I have before me reads, "The committee will meet in Sarnia and in Milton." That's the revised report. So I'm not sure, when you spoke to the two revisions, that they were both actually in the minutes.

The Chair: You're right. They're not in the minutes, but what I'm trying to reflect is the discussion that took place. The subcommittee did not agree to the revision, so this is an accurate reflection of what was agreed to, but I wanted to make sure that all the committee was aware of the discussion.

Mr Hardeman: I recognize that. I also recognize that at the end of the day the majority of the committee will vote where we hold our meetings. I don't have any problem with that, but I do have a problem with the suggestion that previous meetings were held with House leaders over a number of issues that we were not made privy to or that the members of the subcommittee were not made privy to.

When we had our subcommittee meeting, discussions were held. In the original agreement, I should point out—I have since then seen it—it mentions both places. In one paragraph it mentions one, and in another paragraph it mentions the other. The subcommittee met and it came to the conclusion, as the minutes show, that we were going to hold them in Sarnia and in Milton. The subcommittee agreed; the report was printed. We asked staff to proceed with the advertising, as it was done that way.

My understanding was that the bill that's going to be heard has a different impact in one part of the province than it does in the other. The people in the north, right next door to where my sister lives, are very much in favour of the bill. She lives just outside of Kirkland Lake. She thinks the government is doing a wonderful job in making sure that the garbage will never be dumped there.

That's not necessarily the opinion of the people living in southwestern Ontario, who are putting up with the trucks that are taking all this garbage to Michigan, with no end in sight, if the 15-year approach in Kirkland Lake is no longer allowed to be on the books.

My understanding is that between the time the subcommittee met and agreed to where we were going to hold them—incidentally, as a member of the Legislature, when they appointed me as a member of this committee, and from there on as a subcommittee member, to make decisions on how we would organize the job entrusted to us as the body that was going to take for public consultation a government bill, I took that job seriously, that we'd get to make those decisions.

All the information that was available that day was put before us, or at least I thought it was. We were to decide, as a subcommittee, where we thought the best place was to hold public meetings. It was decided at that meeting that it was going to be Sarnia and then Milton. That's where, at least from the people I talked to, the information was that they were most anxious to be able to present their views to the committee.

I wasn't aware of one request coming from someone in northern Ontario who wanted to be heard. They just want the bill passed. I think they all realize that with a majority government, at the end of the day, it will pass.

The people in other parts of the province wanted to be heard because they had, I'm sure, some recommendations on what should be changed in the bill, or whether the bill should or should not be passed.

1550

I guess my concern arose when the government House leader came forward with wanting to go back to the other place the three House leaders had agreed upon, which was Windsor, because it seems that the member representing the Sarnia area doesn't want this bill to be brought to that community to be heard. Because it is my understanding that that community is not as supportive of the government's initiative as they might be, and the Liberal member of that area doesn't want it in that community.

The government can avoid going there, if that's what they so wish to do, because they have the majority vote on this committee, but I want to tell you that I don't deem it appropriate that because of what may or may not be said in that community and because it is opposed to it, I think it's a mistake to say, "We don't want to hear from that community because they aren't going to say what we want; we'd rather go back to Windsor, where no one objects to us being there."

So I object to changing the report from the place where it's going to be, recognizing that I don't have the majority vote here, but I do want it on the record that I oppose changing for the reasons put forward for this change.

The Chair: Thank you for that clarification, Mr Hardeman. Any other speakers?

Mr Michael Prue (Beaches-East York): I just have a question about the move to Windsor: Was that agreed to by the House leaders?

Mr Crozier: If I may, Chair, it's my understanding that, notwithstanding Mr Hardeman's comments, there is agreement on this change.

Mr Prue: By the House leaders?

Mr Crozier: You're getting really specific, and I can't say.

Interjection.

Mr Crozier: Yes, I can say "yes."

Mr Prue: OK, that's all I want to hear.

The Chair: Any further discussion on this issue? Mr Hardeman, I think you have clarified your position and your speculation.

Mr Hardeman: Well, Madam Chair, that's not your function.

The Chair: I understand that, but I'm just saying that, unless you're going to clarify, we have a motion on the floor.

Mr Hardeman: That's right, Madam Chair. I don't believe the rules of the committee suggest I have a certain length of time I can speak to that motion.

The Chair: No, I'm just asking you to speak to the motion. I think you clarified your position; I'm asking you to speak to the motion.

Mr Hardeman: It's speaking to the motion. I think the member opposite just mentioned the fact that we had agreement on the location from the three House leaders. I can assure you that there was no agreement when we had the second committee meeting. The House leader of the third party—at least the third party as of tonight; well, maybe I'm being a little presumptuous. The House leader of the New Democratic Party actually came to our meeting and said that he had not been consulted on the change, so we did not have—and I can assure you that since that time, our House leader has not been consulted to make this change now. In my opinion, we do not have House leaders' agreement.

Besides that, I don't believe that—and I'm speaking to this motion, Chair—this requires the House leaders' agreement. This requires this committee's agreement. Up until this point, the people of this committee didn't support the change.

The Chair: Any other discussion on the motion? No. So the motion is that the committee meet in Windsor on Thursday, May 20. That's the only change to these minutes. All those in favour? Against?

Mr Hardeman: Recorded vote.

The Chair: I think it's a little late. It's too late for a recorded vote. It's carried.

Our next item is—

Mr Hardeman: Madam Chair, I would suggest you have to recall the vote.

The Chair: Just a second. I'm getting advice.

What we've done is move the change, the motion. We now have to move the body of the report as a whole.

Mr Hardeman: I would ask for a recorded vote on the whole report.

Ayes

Cansfield, Craitor, Crozier, Leal, Prue, Wilkinson.

Nays

Hardeman, Miller.

The Chair: The report, as amended, carries.

COMMITTEE BUSINESS

The Chair: Item 2 is our report to the House on assignment of ministries and offices. We have a draft report. Would someone be interested in moving adoption, or is there any discussion?

Interjection.

The Chair: Mr Leal has moved adoption. Any discussion? All those in favour? That's carried.

Our last item before we get to our guest is the item on the invitation to the 2004 annual meeting of the National Conference of State Legislatures in Salt Lake City, Utah. This is here for consideration. Any discussion?

Mr Prue: I believe that this committee should send some people to it. Oftentimes we sit here as parliamentarians and politicians and we're afraid that someone is going to yell and say it's a junket. I don't believe it's a junket. Although I'm not a regular member of the committee, it seems to me that we should move that there be—I don't know. Is it untoward to say that three members, one from each party, go? That seems OK.

Mrs Donna H. Cansfield (Etobicoke Centre): I was just curious about the process and purpose, if maybe somebody could help enlighten me. Presumably this is before this committee for a reason. In the past, what has been the process, and have people participated? Is there an agenda? What do you anticipate learning from it? I was just curious whether or not there was more information than just that there's a conference.

The Chair: We did receive an invitation, we did receive details about the conference and it was distributed to the committee previously.

Mrs Cansfield: OK. I got the conference overall but I didn't get any great detail—not that I saw, anyway. Maybe you could tell me what the process has been in the past.

The Chair: I'd have to defer to the clerk's knowledge.

Clerk of the Committee (Mr Doug Arnott): In the past, predecessor committees to this committee had an ongoing relationship with the National Conference of State Legislatures for quite a few years and, either annually or frequently, delegations of the predecessor committees did attend, very often as a full committee. Over the years, there have also been smaller delegations that have attended; only one member per party and Chair, for example. In one year, the committee recommended to the board that only registration fees be paid.

So there has been variation of practice over the years. In more recent years, the frequency of attendance has

been much less. The last time this committee attended the National Conference of State Legislatures annual meeting was in Chicago in 2000. Previous to that, I believe it was 1993 or 1994 that a delegation attended an annual meeting.

Mrs Cansfield: So it's been kind of hit and miss.

Clerk of the Committee: Yes.

Mrs Cansfield: I don't have any difficulty. I think if people want to go and they have an opportunity to learn, I certainly think that people should have that opportunity to go. Just because it hasn't happened in the past, doesn't mean it shouldn't happen in the future.

Mr Prue: I'd just like to amend my own motion, if I could. I think it's important. When I heard about one from each party plus the Chair, that does make sense, and I should have included that.

Mr Leal: We had a short overview of what the conference was about. I guess, as a new member, it was difficult for me on the surface to make a relationship of what my experience might be here over four years and, if I went to the conference, what experiences I could bring back for me to implement some of the ideas that we may pick up. During my municipal career, we were asked to go on all kinds of conferences, but for many of them the information discussed and the ideas that were put forward had some direct impact that you could take back. I know, Madam Chair, you had the same experience during your time as a councillor in Brampton.

1600

I guess my question to the clerk would be: When previous committees went to the conferences in the States, were there any reports filed that I may be able to look at to get some idea of what they brought back to this assembly? Were the people who were travelling required to put together a report, to report back on their experiences at that conference?

Clerk of the Committee: There has not been a requirement that the committee report back to the House. In general—I have to refresh my memory—I believe this committee or predecessors have not reported specifically on their findings or experience or discussions at the NCSL annual meeting. The last time this committee attended in Chicago, the committee requested and had drafted a report which was circulated to committee members at that time, and a copy of that was also sent out to members here as background.

Over time, I believe what members in the predecessor committees learned at annual meetings did feed into a number of developments at this assembly. A principal one I can think of is the renovation of this building, as a major project, and the concern for heritage of assembly buildings. As well, in discussing the role of members in Legislatures, I believe that also assisted in heightening their awareness of the rules for their House back here.

The Chair: Mr Leal, did you have any more questions?

Mr Leal: My experience has been—I know in the last number of years in the city of Peterborough, when councillors were travelling, we made reporting a mandatory

requirement. One of the reasons we did so was that during difficult budgetary discussions, to justify the value to the taxpayer, we wanted to know that something was coming back and indeed being used. That was the basis for future budget planning, whether we would allocate resources for—I'm not debating the value of people going out and travelling. I'm just saying I'm concerned about the value after we go through that experience and what contribution that travelling experience and going to the conference can have for all 103 members of the Ontario Legislature.

Mr Hardeman: I'm in my ninth year here now and I've yet to go to a conference on behalf of the province of Ontario. So it's not that I'm a regular person to join—I did a lot of conferences when I was a municipal politician, strictly for the purpose, because I know nothing about what I'm doing, and the only way I'm going to learn is to find out how others do it.

But I'm not a strong supporter of reports back because, to me, that judges very well the quality of the writer but not the quality of the conference. It's how the individual coming back can explain what they picked up in a report. It may be very helpful, but likely we could send it to the general secretary of the association and ask them for a report on what happened at the conference. That would likely be more helpful than a report coming back from individuals.

I think the only way these conferences are of any assistance is the personal contact. I personally have to see it. If you can read it, then you can get the book from anywhere and get it out of that, but you don't get the feel of it until you're actually there. So I would support the motion. I would divide it to just one member of each caucus. I think that could be a decision that is made individually, but I think, as a government, we should support people trying to get information and experiences that will help. Maybe I would not get into such a heated debate with the Chair if I had known that's not allowed in a committee. If only I had been to a conference to find that out. So we apologize for that, Madam Chair, and hopefully we'll get to a conference where I'll know that that's not how you're supposed to conduct business.

I really think it's important that we take advantage of opportunities that are presented, such as this. I think it's particularly true, as we look around this table at the number of people who have not been involved in this type of structure for a long period of time, that this is a great time to go and find out how others do it.

I would strongly support the recommendation that we partake of this opportunity.

Mr Norm Miller (Parry Sound-Muskoka): I'd like to report that I did speak to a long-time member of the Legislative Assembly who has on two or three occasions attended the National Conference of State Legislatures. He did report orally that it was very worthwhile and fascinating and he spoke highly of his experience and learning from the conference.

I doubt that I would personally be going, but I certainly would support the motion to allow participation by

any members of the committee who so desire to go to this conference.

The Chair: Any other speakers?

Mr John Wilkinson (Perth-Middlesex): I'm just subbing today, but perhaps referring this matter to the subcommittee so it could be resolved might move along this afternoon.

Mr Prue: It already is.

Mr Wilkinson: Well, the people who are deciding.

The Chair: I hate to send things to the subcommittee because—

Mr Wilkinson: They're meeting next week.

The Chair: I know, but it's been to the subcommittee, back and forth actually, a couple of times. If we could make a decision today from a time perspective—this conference is in July, so we don't want to pass this off again. We really should make a decision today. It has been the circuit.

Any more discussion on this issue? We have a motion before us that, I believe, one member from each party would be allowed to attend.

Mr Prue: Plus the Chair.

The Chair: Plus the Chair.

Mrs Cansfield: Could I make an amendment to "up to one member"? I agree, if you're on a committee and you want to have some professional development, go. I don't think it should be restricted. Everybody has something they can learn and bring back and participate. How do you decide? Age? Male? Female? That's ludicrous. If you're on the committee, you should be able to participate in the functions of the committee, as a member. I think anybody who is on the committee should be eligible to go, so I'd like to make that amendment.

Mr Kim Craiton (Niagara Falls): Just some clarification for me: I'm a sub. Can a sub attend a subcommittee for one of these?

The Chair: No.

Mr Craiton: It has to be a member of the committee? OK. Thank you.

The Chair: Any more discussion? All those in favour of the amendment—was it a friendly amendment?

Mr Prue: I don't think it could be, because it is changing too much. I don't think it's a friendly amendment but I accept it as an amendment. It's changing my motion too much, because it's everybody. I'm not going to say I'm not going to vote for it, but it is not a friendly amendment.

Mrs Cansfield: There's no such thing as a friendly amendment.

The Chair: I'm trying to understand the order. The amendment goes first and the amendment is "any member of the committee." All those in favour? That's carried.

The motion as a whole was one member from each party, including the Chair?

Mr Prue: It is now amended that any member can go.

The Chair: All right. So that was carried. It is carried and there will be a discussion, I guess, from each party as to who the members will be who will be attending this conference?

Mr Mario Sergio (York West): No, no. The amendment which was just approved was, "any member of the committee." It's not "the party." It's members of the committee who want to go. Let's make this clear. Let's not bring this to the attention of our parties or party leaders now, because it's our decision here.

The Chair: I'm educated as we go through this process that in order to take that next step, we have to get approval for budgetary requirements from the Board of Internal Economy, and then the next step is authorization by the House. So we have to go through those next steps before we get to who would be the individual who's going. So we'll get those next steps moving and then we'll be reporting back to this committee as to the next stage.

1610

Mr Hardeman: To the clerk, I was just wondering whether it's required to go to the Board of Internal Economy to have some indication of how much it would be. Obviously how many people are going would have an impact on the budgetary approvals. The motion as it is now passed would be the upper limit, that every member of the committee was going, which I don't believe would be the case, but that would be the possibility of the motion so that's what you would have to get financial approval for. If only half the committee is going, it's a totally different financial approval. They may not have enough money to send everyone but they may have enough money to send those who want to go. I want to make sure that in our approach, we put that in.

Clerk of the Committee: That is correct. It would be up to the board to make its decision. It will be necessary to bring a budget before this committee for specific approval of dollar amounts.

Mr Sergio: Is there a timeline by which we have to notify the committee or the department as to who wants to go?

The Chair: I'm not sure if there's a timeline for registration for this committee, but I would think if we can't achieve the first deadline by—

Mr Sergio: I'm asking the clerk, what is the process now? Whom do we notify, how and by when? So before it goes to the next year—

Clerk of the Committee: As soon as there is budgetary authorization by the Board of Internal Economy, if that is their wish, then as clerk of the committee I would be contacting each member of the committee to ascertain—

Mr Sergio: So there's no need at this stage to say who wants to go and stuff like that?

Clerk of the Committee: No.

Mr Sergio: OK, thank you.

Mrs Cansfield: I'm sorry, I think we're making this far more complicated than it needs to be. The idea is that, in principle, any member of the committee can attend. Next, I would assume, is who wants to attend. If nobody wants to go, there would be no point in going to the Board of Internal Economy. Why go there, get a huge budget and get everybody in a kaffuffle to find out no-

body wants to go? I think it should be the other way around. It may be two people, it may be one, it may be none. Doesn't that make more sense?

So I suggest you find out who wants to go and then base your budget on that and, say within the next week, e-mail the committee members, "This is an option. Do you wish to attend? We need to know by May 31." Then, if nobody wants to go, there is no need for a budget. You report back that nobody is attending and move on.

The Chair: We'll endeavour to do that. Any more discussion?

OMBUDSMAN ONTARIO

The Chair: Our next item is the one we've all been waiting for. It's the presentation by our Ombudsman. I apologize for keeping you waiting, Mr Lewis. On behalf of the committee and the members who were able to attend the orientation in your office, I want to thank you very much. Last week we really did enjoy our time there and we appreciated your hospitality. It was very educational and I'm sure the members who were able to attend would agree with me that it was a very worthwhile trip.

Mr Clare Lewis: I must tell you we were honoured to have members of a committee of the assembly come to our office. I'm not aware of it having happened before, and it was really terrific. I know my staff were excited at the fact, as was I.

If I may, I'd just like to introduce, as I have to some of you already, Ms Lenna Bradburn, who is our director of investigations. We call it complaint resolution, but I call it investigations because that's what the Ombudsman supposedly does. She has been a great asset to our office since I stole her from Guelph, where she was the first female chief of police in Canada. I know I said this to some of you last week, but she actually had the temerity, when younger, as a member of the Toronto Police Association, to picket my office when I was the police complaints commissioner.

I appreciate the opportunity to come here and I wonder if I could just speak largely about three things. I see what the agenda is. Don't be horrified by the paper I'm pulling out. With your permission, Madam Chair, I'd like to distribute to the members a speech which I will give tomorrow in Toronto to the Ontario Association of Social Workers—quite an important group, with many thousands of members and 15 chapters in the province. I will be the keynote speaker at their annual general meeting, as a means of my outreach. It's through these people that I want to try to reach their clients, who of course represent very vulnerable populations in the province, obviously.

The reason I'm asking you to look at the speech, if you have time, is because I think you are going to play a role in the selection of my successor. I hope you do, because I was the first Ombudsman to go through this committee in a competitive process and I thought it was a very interesting and exciting one. Of course, I liked it better because I succeeded. Thank God I don't have to go through it again; I have a non-renewable term.

The speech, although it's not designed for you, really speaks to how I see the office of the Ombudsman and what I think its value is to the people of the province—or of any jurisdiction—to the government and to the House as a whole.

I speak also because as some of you know I'm also now the president of the International Ombudsman Institute. I've had the real privilege of knowing Ombudsmen from all across the world and it's really quite astounding. Even though the cultures and certainly the political constructs are often quite different, and many of them aren't as independent as we're allowed to be, nonetheless there is an attempt throughout those institutions to see their obligations through the perspective of the public, and they see the value of the office in supporting democracy. It varies according to the amount of it that they have. In a country like this, it's not nearly such an important role because we have so many supportive institutions.

If I may distribute those to your members, I think you might find them of interest.

The Chair: Please do.

Mr Lewis: I'm here for a number of reasons. One is just that: I'd like to be available to you. You're going to make your own choices, should you be selecting, but I would like to speak to you a little bit about my view of what you might be wanting to look for in an Ombudsman should you be given that role.

I'm going to have the temerity to warn you to be careful of those who are looking to retire in office, because there are always people who have had often illustrious careers who see this role as a wonderful opportunity to cap their careers. I have to tell you that my experience is that this position requires energy, diligence and, in my own respectful view, a considerable degree of passion for the nature of the work. You will see that I feel that in the paper I gave you, and that's why I've given it to you. I just want to encourage you. There are a lot of good people out there but there will be some looking for a ride, and they're not entitled to it, with respect. It pays well, it's an honourable position and it should be filled by the best you can get. I think it's wonderful that this kind of committee process exists because you have a real chance to see that. I know in the last competition there were people who were seen who were really very qualified, so there you are.

1620

I wanted to bring to your attention that I'm having a bit of a problem at the moment about my budget, and it's the first time I've had to complain of this. I bring it to you because in your terms of reference, as I understand them, among others, you have the ability to advise the Speaker and the Board of Internal Economy, and it is the Board of Internal Economy which of course vets my budget. They did so on April 27 and they did all the officers of the Legislature at that time. It's not all settled by any means.

I mentioned this last week. I'm not unaware that it is a very tough time in government in this province; there's a

huge deficit and we're all looking with anticipation to the 18th, I believe. Is that the day of the budget?

Interjection: It's 4 o'clock, here.

Mr Lewis: It's 4 o'clock? Oh, that's my birthday. Hooray.

Interjection: Happy birthday.

Mr Lewis: You know how to depress a guy, is what I hear.

Mr Leal: It won't be depressing. Magnificent.

Mr Lewis: I know there's going to be a lot of sharing of pain, and we all will hit it.

I have not had my budget cut, and I have to take that as an encouraging sign. But we came into the budget process on an understanding which appears not to have been correct.

I think we're the only one of the officers of the Legislature who had to go through a collective bargaining process. We entered into that late in the year. We think it was a very successful process, led by Lenna Bradburn, who has a lot of experience, both union and management. We arrived at a collective agreement. Of course, over 70% of our budget is salaries. We have a staff of 85 persons. The cost of the collective agreement is in the neighbourhood of \$450,000, \$460,000, for this year.

Our instructions on the budget—we were told to do what the Office of the Legislative Assembly was doing and follow that format—was that we would flatline, in a sense, on our operational stuff. But it also said that salary increases, merit or otherwise, were to be restricted to 3.5% across the board for the Office of the Legislative Assembly; not the offices of us, but we follow along. We look at those and we assume that's what we're supposed to be, with individual merit not to exceed 6%. So, fine.

Anyway, we did do just that and achieved an agreement, and we're in some trouble now because we got our budget of last year. It's a lot of money. On the other hand, it's not very much in the nature of the provincial budget.

I'm going to be blunt. When I came into this office, it was an office in some disarray. There was a lot of trouble in the office. There were a lot of pressures on it, and I knew that coming in. It was no surprise. I came in with a desire to turn it around and to make it a value to the public and to the assembly. I think we've gone a long way toward that, to a large extent with the efforts of Lenna Bradburn and my other senior staff. We have an equitable working office now. It has done very well and it's producing much better because it's a happy office, which it most assuredly was not when I entered it. I've never seen such dysfunction and enmity. But it's not that way any more.

So we've retooled absolutely every part of the office, including just lately we have our audit on our own financials and we're cleaning that up. It wasn't bad, but it needs to be modernized. What I hope to do is to walk out of this office with a refreshed and vigorous office which would be serving its mandate well.

If we do not get the money, or a good portion of it—and frankly, I think we need it all—it will affect our

service, and that's all there is to it. That's not a threat; it's just the reality. We will also be in a position that we'll have to very seriously consider notifying the union that we will be commencing a form of layoffs, perhaps initially a rolling layoff process. It wouldn't matter how we get through this year; my successor will have a really bad time in the following year. It's not your responsibility, but you do have the right to advise the Board of Internal Economy.

I'm going to be going before them. They didn't see me the last time. They've deferred some of the other officers, but I understand other officers of the Legislature asked for increases for their staff as well. A couple of them, I think, had increased jurisdiction, which is a whole other issue. That's not my issue. I'm not entitled to money because I have to do more, but I have to pay my staff.

So I'm hoping that you will feel that perhaps you could speak to your colleagues on the Board of Internal Economy to say that I think this is a serious matter. I'm proud of what we've done and what we continue to do, and I hope that the assembly has some pleasure with it. I think we've repaired relations with the civil service to a considerable degree from where they were at the end of the 1990s. The result of that isn't that we had to be buddies; the result is, we get a lot of agreements and we don't have to come here and fight things out. So with your permission, that's what I wanted to say about that.

In terms of coming before you in the normal course—I think, Madam Chair, you know that I've done it very little. We will be issuing our annual report on June 17, and the process by which we do that is we table it with the assembly through the Speaker. In the past, I have then, with the permission of the standing committee, come before it later in the day to answer any questions they may have, because it's delivered to all the members. I've done a press conference by then and so on. I didn't do it last year, but I was willing to do it last year and would be willing to do it again this year, to come before you and answer any questions you may have. It is my final report and I think it's a pretty good one. I think it's showing some results of value.

Having said that, I notice your review here by Mr Kaye, the research officer, of how our office works and reports and interacts with you. I am not going to be bringing a special report before you, but the timing is such that I will be issuing a supplementary report to the annual report. I just decided that yesterday.

There's a matter of an investigation which I did of some substance that I think is important. Essentially, I have no reason to bring it before you out of my desire to argue it out in front of you and seek your support before the Legislature. After several to-ings and fro-ings, the ministry has more or less agreed with what we had to say, and I don't see any value in having a battle about it. But I think the issue is of significance and importance. I can't get it into the annual report in any significant way because it's gone to press, so I intend to issue a special report which I will table at the same time as the annual

report on the 17th. I think you'll find it interesting; it has got to do with children.

May I bring up, Madam Chair, an issue of the use of the word "ombudsman"?

The Chair: Of course.

Mr Lewis: Thank you. Internationally this is a real concern, but it's becoming a concern for me. Ombudsmen have been honoured by copying. Everybody's an ombudsman these days. You've got the Shell Oil ombudsman and you've got the banking ombudsmen. Some of them do very good work. I must say that you have a lot of university ombudsmen. But there are real indicia for what an ombudsman is. Impartiality and independence are the primary two. The Ontario construct is one of the world leaders in terms of both of those. It gets no interference except with the budget, but even judges have to put up with that from time to time.

1630

There is a great temptation for people to use the word "ombudsman," and it damages the parliamentary or the legislative Ombudsman because it undermines us. There's already one in Ontario. It sneaked by me. I don't know how it happened, but you've got a financial services ombudsman. It's in the book. We get her calls and the trouble is that she gets a lot of ours. The fact is, she doesn't think she's an ombudsman and I don't. She serves a valid purpose in terms of receiving complaints and so on, although it's lessening now that it's becoming a federal issue.

I've heard there may be some consideration for having a children's ombudsman, and I know there's consideration of a linguistic ombudsman. I have no quarrel with the issue of supporting specialized individuals doing that kind of work. But the problem is that when the word "ombudsman" is used, I think it not only confuses, it depreciates. It's bootstrapping. I'm going to be blunt about it. I think the Ombudsman is a particular officer of the Parliament or the Legislative Assembly and it's not something that should be readily copied.

The secretary of the cabinet of Saskatchewan has advised all ministries that they are not to use the word "ombudsman" in creating a position unless the government has passed it in statute and it is with the consent of the provincial Ombudsman.

New Zealand goes further, and I'm not even going to bother with it. You can't even be a private ombudsman unless the chief ombudsman approves of it, so he doesn't approve anybody. I think that's pretty bad.

I've already talked to Madame Meilleur, the minister for francophone affairs. I think what she wants to do is extremely important, but I've pointed out to her I was the police complaints commissioner for this province for eight and a half years. The office was not created as an ombudsman, but that's what it was. It was a specialized executive ombudsman. The reason the government of the day did not call it an ombudsman was that it was the same government that created my office and they called it, quite properly, the police complaints commissioner. They took the jurisdiction of police away from the

Ombudsman, which was fine. That was great. I think that office was able to do it better. But the confusion did not occur through the use of the word "ombudsman." I just lay that before you. I'd be happy to give you more detail. But internationally, there is great concern by national ombudsmen and so on at the proliferation.

I have to tell you the worst I ever heard—I hope I didn't tell you this last week, but maybe I did. I was at a meeting and the Shell Oil ombudsman got up to talk to all these young people who were now "ombuds" and "ombuddies" of various assorted organizations and said what a pleasure it was to be there to discuss with them and share the experience of ombudshusbandry. All I can say to you is, the only husbandry with which I'm familiar takes place in my barn, with my wife's herd of Red Angus cattle. We consider it a concern. That's all I wanted to mention to you.

There's a final issue—have I done it? That's it. Oh no, there's one here. It's the special reports.

Only on one occasion did I bring a special report before this committee for argument, and I don't expect to do it before the end of my term. That is not in any way denigrating this committee. When I thought I needed it, I was delighted to come before it. But in fact, if the matters are important, we've been pretty fortunate in getting sufficient agreement with the government or the ministry that we don't need to come and fight with it. As you'll see in that speech—and I truly mean this—I'm not interested in "gotcha." I'm interested in the solutions. That's what it's about and that's what I hope you'll be looking for when you replace me. I'll be out of here by January 29. I want to tell you—and this is for you and your colleagues in the assembly—it has been a great privilege to serve the assembly.

Thank you very much. Any questions you have, I'd be more than happy.

The Chair: All right. Maybe I'll just say thank you very much for the copy of the speech. I know that the members appreciate having that heads-up, that pre-look at the speech that you're going to give. I just want to confirm: You want to come back on June 17, the day that you—

Mr Lewis: If it's available to you.

The Chair: It's one of our regularly scheduled meetings.

Mr Lewis: Yes. I knew that before I said that.

The Chair: Yes. Good idea. I assume by the nodding around the table that this group would be very grateful to see you that day and perhaps discuss your report that you've tabled in the Legislature. So thank you very much for that offer, and I think we'd like to take you up on that.

Are there any questions of Mr Lewis? Mr Miller first.

Mr Miller: Certainly. Thank you for the report. I wish I was around last week for the tour of your office.

I'm looking at the reporting relationship graph here and I notice that after the annual report comes to the committee, the committee can either support it or not support it. What happens if the committee decides, for whatever reason, not to—

Mr Lewis: That's a special report.

Mr Miller: OK. That's a special report.

Mr Lewis: A special report's an individual case that I want to argue—seek the committee's support. I believe something needs to be corrected or redressed. The government or the ministry doesn't think so, at which point I have to decide whether I want to go into a confrontation.

I've only done it once with the committee, and that was over Cancer Care Ontario and what I took to be unintended but real discriminatory treatment of northern Ontario and southern Ontario through the operation of two different programs. I had to give notice to the Premier. I think you'll notice that first: that I wanted to do it. I came before the committee. It was a great experience. We were here for two days—two sessions. Normally, the ministry will put the deputy in to argue the matter with the Ombudsman before the committee. They didn't do that in this case; it was the Ministry of Health and they put the parliamentary assistant in. I have to admit, I was sailing close to the wind on policy as opposed to administration, but it was a very real issue. I didn't win—it split on party lines, and the majority carried—but I was pleased to see that a few weeks later the northern health travel grant was increased. So I got some of it.

I've had other cases in which I didn't get as much as I wanted from the ministry but decided I wasn't going to crank it up to the level of putting it before you. I had enough that I couldn't really justify looking for that extra.

The annual report: I sure hope you'll like it and support it, but I'm not asking for a vote on it.

Mr Miller: That's the one on the annual report. You're going to come around on June 17 and talk about that.

Mr Lewis: Yes, and you'll have the supplementary to it as well. Let's just consider it part of the annual report, although it's actually my full report on that issue, which you don't normally get in the annual report. It also will have with it the ministry's replies. You'll see everything. I have no doubt it's the kind of issue that may find its way into the House. It has been there before.

Mr Miller: You were talking about your budget. What is your total budget?

Mr Lewis: I knew you were going to ask that. I told my staff that anything over \$9 million, it was going to be a tipping point. We're nine million and—

Ms Lenna Bradburn: It's \$9.4 million using the cash basis.

Mr Lewis: Yes, \$9.4 million on the cash basis, which we've had to go to. A staff of 85: In the budget submission, we did ask for an increase of one person on staff. That was rejected. What else was rejected? I was told by the Legislative Assembly Human Resources office—since they were booting me, they had to advertise for somebody else—that I had to put \$13,000 in my budget for that. So I did. It was denied. Well, good luck. Find it myself, I guess, but it's going to be a small ad.

Would you mind hearing from Ms Bradburn about this? She knows more about it than I do.

1640

Ms Bradburn: Just on the budget, the amount is approximately \$460,000 that we're requesting this year over last year, of which \$29,500 is direct operating expenses. The remainder is all compensation.

We're one of the few offices of the Legislature, as I understand it, who have unionized staff. We're not part of the OPS. We're not civil servants. Our staff are unionized through the Office and Professional Employees International Union.

As Clare mentioned, we did negotiate a collective agreement this year. It was a three-year deal, which is something that this office hasn't had before. Included in the compensation costs are the increases for the salary as well as severance and termination obligations that we are required to provide this year, backfilling for maternity leaves, as well as temporary staff.

One of the things that we've done, as Clare mentioned, in the initiatives that we've undertaken in the last two years is that, in order to minimize the increases in full FTEs, we've been trying, to the best of our ability, to fund positions when people are away on vacation. Our work doesn't stop, obviously, and in fact, during the last year, through our efforts and our community outreach, we're anticipating approximately 2,000 more complaints and inquiries this year. The bulk of those get dealt with through our Ombudsman representative level, and that's what the one FTE position is that we have requested in this budget.

Mr Miller: The three-year contract that you have: What sort of increase is it over three years for your unionized employees?

Ms Bradburn: Over three years, it's approximately 11%. What we do in our comparison for our salaries is compare ourselves to the OPS rates for our positions. That's the group that we look at.

Mr Miller: Thank you for coming today.

Mr Crozier: Very quickly: Mr Lewis, I've been aware of your outstanding reputation for some time. It's a pleasure for me, ever so briefly, and I look forward to the June meeting to meet you, but your comments about the use of the word "ombudsman": I wonder if we might, Chair, ask research to give us a view of the word "ombudsman"—where it's used, how it's used in different jurisdictions. That may be something we can use in passing advice on to the government as to how they might either limit or not use the word "ombudsman." We might even get the fiscal ombudsman changed.

Mr Lewis: I'll give you an example of people who do get called ombudsmen and who are not and should never be called ombudsmen—the advocates. For instance, we have an Ontario children's advocate, Judy Finlay. She didn't want to be an ombudsman and she doesn't see herself—she understands the distinction. She understands that her role is there to advocate for the children all the time. It's not an ombudsman's role.

As you'll see if you read the address, I am not an advocate for the complainant; I am not an advocate for the government. I am an impartial investigator, and only if I find error do I then advocate for a correction. That's my role, and it's limited.

When I got to this office, they were having the staff conference. They'd delayed it until I arrived. I heard everybody talking about their clients. "Just a minute; who are these clients?" "Well, you know: the people we serve." "I thought the Ombudsman was supposed to be impartial." "Well, yes."

I said, "I was an advocate for many years and I had many, many clients, and the last thing I was was impartial. It wasn't my role." They're complainants—that's what the statute calls them—and I've abolished the use of the word "client" in my office, not because I'm insensitive to the needs of these people, but because I wanted to be very clear that I am a complaints investigator, and fairness is what I advocate. Period.

The Chair: A request has been made that research be done, and I gather there's some interest on the committee for that report to come back at a later date.

Mr Craiton: Maybe this will come out in your report. I'm just kind of curious. How many complaints do you receive in the course of a year?

Mr Lewis: About 23,000.

Mr Craiton: Out of that, what percentage falls under your jurisdiction: one out of every three, one out of every four?

Ms Bradburn: We average about 7,000 a year right now that are not within our jurisdiction. They'll be regarding the federal, municipal or private organizations. We have a referral database that we send people to.

One of the things that we've been doing with our outreach campaign is try to increase the proportion of our complaints that are actually within our jurisdiction, and we're starting to see that happen. So we're expecting that number will go down in proportion to the total.

Mr Craiton: The only other comment I want to make is that as a new member from Niagara Falls I want to tell you that my staff and I have used your services for some of our constituents who have come in. We've very pleased with it. I just want that as a matter of record.

Mr Lewis: You should know that I'm a bugbear on three of the ministries. One is corrections: I get beaten up by the public all the time about why I would ever look after them. You'll see why when you read the paper. The Family Responsibility Office—from every constituency office. I just so much regret that they have never repaired it, because as long as it's there, the Ombudsman has a job. And there are some problems with disability payments and stuff like that. It's really interesting stuff.

We're an adjunct to the members. Members are ombudsmen. You don't have the power to investigate, summons and so on. You do have the right to send matters to us, and we welcome it when you do.

Mr Leal: In the short time I've been here, your passion and commitment to the job certainly shine through, and I appreciate that.

I was very interested in your introductory remarks about what role this committee might have in choosing your successor. I don't want to get your quote out of context, but you said, "Be cautious about someone perhaps finishing out their career."

Mr Lewis: I am, but they got the right one.

Mr Leal: If you were providing some advice to this committee, what kind of guiding principles would you provide us in terms of looking for a successor?

Mr Lewis: Can I answer that by beginning negatively?

Mr Leal: Sure.

Mr Lewis: You know I was a judge.

Mr Leal: Yes, that's right.

Mr Lewis: For reasons, I like to say, which have often since escaped me, I resigned from the bench in order to become police complaints commissioner. I know what the reason was; it was the right thing to do. I was not asked to resign. I knew I was being considered, first by Roy McMurtry when he was Attorney General and then followed by Ian Scott when he was.

I talked to my wife about it and said, "The job of judges is judging and the job of commissioner has the potential to be controversial, and judges can't be controversial. If I take this job, if it's offered, I think I have to offer up my job." Nothing was happening. Ian Scott's assistant would call me from time to time and I said, "Look, if he wants to appoint me, I'm prepared to resign." Well, I had the job within the day.

He required, when Rosalie Abella's turn came up as chair of the labour board a while later, if she wanted the job repeated, she had to resign as a judge. If she wanted to be a judge, go back to the bench. She was a judge at the time. Both she and I have had great careers, despite our resigning from the bench.

Governments have a habit of loving to appoint judges to things, and I think their reasoning is often flawed. I'll never forget when the government—I think it was the Liberals, but it might have been the NDP—created the special investigation unit. It arose out of my Task Force on Race Relations and Policing, around that period and that stuff. I got called up by the government and they passed a couple of names by me to head this organization and I got quite angry. They were wonderful people: retired Court of Appeal judges. I said, "I know what you're doing. You think you can appoint a judge and the whole world is going to say 'Wow,' and it's going to be really happy days and the heat is off government." I've had jobs where the job is to draw the heat off government. That's what the Ombudsman does, that's what the police complaints commissioner did, and that's a proper thing. The SIU used to do that because otherwise everybody is all over the police, all over the government. Let the SIU draw the fire. "Don't do it," said I. Well, they did appoint a judge: a lovely man, Justice Osler, a wonderful guy. He was mauled. The day that he resigned I called him up and said, "John, let's have lunch. I know how you feel."

There are some jobs that require a lot of street smarts and they require a lot of the ability to just say it the way you believe it. It's very hard for judges who have been quite cloistered. It was very hard for me when I left the bench, and I was young. I was only 48 when I quit, but, boy, I was really reluctant to be drawn into the fire.

When I got there I found that it was OK, but I'll give you an example. I was president of a group called the International Association for Civilian Oversight of Law Enforcement. We had American, British, Australian and Canadian representatives who did the kind of work I did in police complaints. One of them, from Britain, was the United Kingdom's Police Complaints Authority. He was Justice Francis Peter, who was an Old Bailey judge seconded to be the Police Complaints Authority. So I was over in England and I'm in his office, meeting with him and his staff. I was ranting on about some policing issue, which I can do. He said—did I tell you this last week?—"Oh, Clare. You are so mischievous." I said, "Francis, it's not that I'm mischievous. It's that I'm no longer a judge and I can damn well say what I believe." I do and I did.

I did it in this room when I took the position before the justice committee that the police of Toronto were shooting too damn many young blacks in questionable circumstances, and it had to stop. It has stopped, by the way. It really has, over the years. I've got to tell you that the chief of police went crazy, and we duked it out. So that's fine.

What am I saying? I'm saying, don't be enamoured of the fact that you'll probably get judges coming to apply. They're going to look good. I'm not saying you won't find the right one there. I'm not saying that, but I am saying, don't be overwhelmed by the fact that he's a judge or she's a judge. They get tired too. The job of the Ombudsman just isn't wisdom and so on; it's understanding the communities and what's at stake in here.

I think I told you this last week: I made a decision early. The reality was that I was being legalistic, and that wasn't really what was in play. It was a fairness issue. That's what the Ombudsman's about. I'm not saying judges are unfair, but that's one thing I need to ask you to be careful about. Don't be overwhelmed by them. They can look great but, I've got to tell you, I've been there and I appeared in front of them for many years. There are great judges, but they're just like anybody else, so look for the passion.

Mr Sergio: Would you say they are biased? Is this why you say, "watch out for judges"?

Mr Lewis: Oh, no, I don't think they're biased. I think they're often removed. Like any other human beings, I've known bad judges, but that's not what I'm speaking about. Mostly, you're not going to get a young judge asking to come and take it, although it can happen. They wanted to become a judge; they succeeded in getting to be a judge. Do it, right? You want another job, quit and get it.

Cast your net wide. There are good people. Be careful, that's all. I know you're going to get applicants who

worked in my office at one point. Be very, very careful. I don't mean they necessarily worked for me, but who have a history in my office. With the exception of that lady right there, you be awful damn careful—I'm not saying you're going to apply. Be very careful.

Mr Leal: Mr Lewis, your candour and frankness was wonderful.

Mr Lewis: I'm probably out of turn, but you'll do well.

The Chair: Any more questions today?

Thank you, Mr Lewis. Thank you, Ms Bradburn. We appreciate your coming again, and your frankness and candour. We'll see you on 17 June. Thank you for the offer, and we look forward to reading your report.

We've finished the business of our committee. Would someone move adjournment?

Mrs Cansfield: I move adjournment.

The Chair: Thank you, Ms Cansfield.

Committee, you've done great work. Thank you for your service. We'll see you again on May 20.

The committee adjourned at 1654.

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M-3

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Assemblée législative de l'Ontario

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Official Report of Debates (Hansard)

Thursday 20 May 2004

Journal des débats (Hansard)

Jeudi 20 mai 2004

Standing committee on the Legislative Assembly

Adams Mine Lake Act, 2004

Comité permanent de l'Assemblée législative

Loi de 2004
sur le lac de la mine Adams



Chair: Linda Jeffrey
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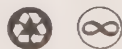
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 20 May 2004

Jeudi 20 mai 2004

The committee met at 1402 in the Hilton Windsor, Windsor.

ADAMS MINE LAKE ACT, 2004

LOI DE 2004

SUR LE LAC DE LA MINE ADAMS

Consideration of Bill 49, An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes / Projet de loi 49, Loi visant à empêcher l'élimination de déchets à la mine Adams et à modifier la Loi sur la protection de l'environnement en ce qui concerne l'élimination de déchets dans des lacs.

TONY BRUININK

The Chair (Ms Linda Jeffrey): I'm going to call the meeting to order. I'd like to welcome members of the Legislative Assembly committee to our first meeting with regard to Bill 49, which is An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes. We're here to hear our first delegation at 2 o'clock, and I believe it's Mr Bruinink.

Mr Tony Bruinink: There's a little misspelling there, but that's OK.

The Chair: Yes, we have the wrong spelling in our agenda. Could I ask that before you begin your delegation you say your name for Hansard. I believe you're an individual here today doing a presentation, and if that's the case, you have 10 minutes. If you leave some time at the end, we can ask questions. Welcome.

Mr Bruinink: My name is Tony Bruinink. I'm all by myself. I represent no one. I have no interest in anything other than the fact that I have a reading for this assembly that I think is extremely important to the residents of this province, as well as Canada as a whole.

I'm from the Netherlands originally. I immigrated to Canada in 1951 and settled in Chatham; I'm now in Mount Brydges near London. Having visited the Netherlands on many occasions after I arrived, I noticed that they have something that we don't have, and that is waste management control. Being a small country of 937 people per square mile, they had no alternative but to have a system that was different from ours. We seem to take the position that we just take material and dispose of

it in the ground or, at one time, into a mine, which has now been abandoned. I believe that Europe as a whole, not just the Netherlands, has a better mousetrap.

If I may read this—you have a copy—you'll understand my proposal. In October 2003, while on a trip to Europe on business, I took time out to investigate the solution to the problems of garage disposal in a small country that has no facilities for landfill. The Netherlands has 937 people per square mile in population density, which generates a considerable amount of garbage. Since they do not have problems with disposal, I felt they might have some valuable information we could use in this country. As the saying goes, why reinvent the wheel?

The following report is of my visit to Europe in October 2003 to investigate the management of garbage.

Twente Milieu is an independent company that was incorporated as the result of the merger of a number of sanitary departments in the region of Twente in the Netherlands. It consists of a number of large cities and the surrounding rural areas. The mandate of Twente Milieu, among other functions, is to pick up and dispose of household garbage, chemical materials, glass, paper and electrical apparatus such as fridges, stoves, fluorescent light bulbs etc.

The company maintains a regular schedule of pickup, known as grey for regular garbage, and green for compostable material. Paper is picked up once a month by volunteers assisted by a city truck with a driver and supervisor. Service clubs are chosen to volunteer for this pickup and receive the profits from the sale of this material to the recycler for their organization, such as the Lions Club or whatever.

Other collections take place at quarterly intervals for large household items, a maximum of four items per household, not to exceed 25 kilograms each, and chemicals. Between collections, these items may also be dropped off at specific sites.

The highlight of the operation of Twente Milieu is the disposal of garbage collected. In January 2002, a large industrial plant known as Twence started operation to burn regular garbage. There's a picture of this facility that I've also circulated. This plant is totally safe and in no way a threat to the environment. This plant can be seen on the Web site www.twence.nl. Unfortunately, it's all in Dutch; however, some of the information on that site is contained in this report.

Twence employs 170 workers and management and has annual sales in excess of 50 million euros, which is the equivalent of C\$80 million. My contact in Holland suggested that their service area—this part is very important—consists of approximately 400,000 homes. The burning process will supply turbines with enough energy to generate electricity to supply 70,000 homes. The electricity is sold back to the local electrical utility.

The foregoing information is very basic. Since I have a standing invitation to visit this facility in the Netherlands, plans have been confirmed for a delegation of 25 business people and their spouses from the London area to visit the plant at 1 pm on July 28, 2004, as part of a trip to Europe, with lunch provided by this company.

Respectfully submitted by me, Tony Bruinink, 2550 Emerson Street in Mount Brydges, Ontario.

Why am I here? I'm here because I love my country and I think we are being very, very silly by having trucks, especially from the Toronto area, drive our beautiful highways at the rate of one truck per 10 minutes crossing into Port Huron, pounding our roads to bits. Here we have a country like Holland—and it's not just Holland, but all of Europe actually is the same way. Denmark goes a step further: They generate steam from their plants and in fact supply many homes in the immediate area. These homes don't even have furnaces.

Also, I love going to the Netherlands. I'm here on my own. I have spent my own \$40 to get here—10 cents per kilometres, it was exactly 400 kilometres. I would respectfully request the government of Ontario to take me there too and pay my airfare and two nights of accommodation and send with me some experts on this type of incineration and come back with a wealth of knowledge as to what they do better than we do. We are one of the greatest countries in the world—not always the greatest but one of the greatest—and we have something to learn from other countries. That's why I submit this report to you.

I'm very thankful to Maria Van Bommel, my MPP, who let me be here at such short notice. We had breakfast yesterday morning at the chamber of commerce, and she said, "Tony, would you like to go tomorrow?" She called me back. "Is two o'clock fine?" I said, "It's perfect. I'm here." So I prepared this late last night, and here I am. I thank you. Are there any questions?

1410

Mr Mario Sergio (York West): Yes. Thank you for the presentation, Mr Bruinink. Do you have any information as to the cost of such a facility in the Netherlands?

Mr Bruinink: No. We possibly will have the contract of the plant. I have not corresponded with them as of yet. If I'm not going, I will see to it that I find their name. It's expensive. You can see by the picture, it's an expensive plant. If you look at the little cars in the parking lot, you have some comparables as to how big it is. It's very expensive, but it is a money-making operation.

The red plant, as you see the background, the red building with the red roof, is actually a sorting station.

Materials come in and are sorted and disposed of. Regular garbage is burned there. Beside it, on the right-hand side of the building, is a place for vegetation for the green boxes.

Mr Sergio: Do you know if they do any sorting?

Mr Bruinink: Yes, they do. As a matter of fact, on the Web site it says that in 2002 they began sorting on a larger scale than they ever have. It's also part of their business now. So they do bring material in and have ways of selling it to private enterprises.

Mr Sergio: Other European nations have the same problem we do here, perhaps even worse. Do you know if they are located in some other European countries?

Mr Bruinink: What country are you speaking of?

Mr Sergio: Let's say Germany, Switzerland, France, England, Italy.

Mr Bruinink: They have problems like we have?

Mr Sergio: With garbage, yes. Do you know if such a plant is available in one of those nations?

Mr Bruinink: I've been told that Germany, for example, has similar facilities to the one in the Netherlands. I'm not aware that any country in Europe has any great problem with garbage, other than maybe England.

Mr Sergio: So you don't have any material with you with respect to contaminants running in the water, soil or air from such a facility?

Mr Bruinink: No. That's precisely why I suggested to the Chair here that I would like to go there and take somebody with me. We can find this information very readily. Also, as a matter of interest, the director of the company would come here and tell us, but it's much better to see the plant and have an inspection.

Mr Rosario Marchese (Trinity-Spadina): Thank you, Mr Bruinink. Obviously, you're supporting the government in its desire not to take garbage to the Adams mine. You are supportive of that, right?

Mr Bruinink: Of what? I'm sorry?

Mr Marchese: You're here to support the government in its desire not to bring garbage to the Adams mine, right?

Mr Bruinink: Oh, of course.

Mr Marchese: Right. I just wanted to be clear that's why you were here in part. The other part is to say, however, in terms of how garbage is disposed, what you're proposing is that it be burned.

Mr Bruinink: Incinerated, yes.

Mr Marchese: Incinerated. That's what I should have said.

Mr Bruinink: Totally safe, without any harm to the environment.

Mr Marchese: So are you aware—and I'm not an expert—of the fact that there's a great deal of controversy in terms of incinerating material in general?

Mr Bruinink: I don't have to go far for that, sir. I can go right to London. They had an incinerator in London. It was ill-received by the population. It was totally built inadequately and has been torn down. It's no longer in existence, but it was not the right building. That was 10 years ago.

Mr Marchese: So what you're saying is the state of the art exists to be able to incinerate with very little environmental problems?

Mr Bruinink: None whatsoever.

Mr Marchese: None even?

Mr Bruinink: None whatsoever.

Mr Marchese: That's a claim that those who incinerate make, and you, obviously, believe that and have no reason to disbelieve that kind of information. Is that correct?

Mr Bruinink: The gentleman whom I visited in the Netherlands said they have computers that monitor this steam that comes out the chimney on a second basis, and there's never any risk of—and if there would be, I'm sure they would shut it down immediately to repair it.

Mr Marchese: So those environmentalists who oppose incineration are simply—possibly—wrong? They just don't have the information. Is that possible?

Mr Bruinink: I don't think they're wrong. They don't have the information.

Mr Marchese: I see.

Mr Bruinink: And because they don't have the information, they're wrong.

Mr Marchese: So even though that's their field, that's what they do, that's what environmentalists do, they obviously don't have the access to the facts, in your opinion?

Mr Bruinink: That's correct. Yes, absolutely.

Mr Norm Miller (Parry Sound-Muskoka): Thank you for coming in today to make your presentation; it's very much appreciated. My wife's family is Dutch; her family came over in 1954, I think. If you're not Dutch, you're not much, I understand.

Mr Bruinink: As the saying goes, yes. I want to be politically correct.

Mr Sergio: I'll remember that.

Mr Miller: I'm not Dutch though; my kids are half-Dutch. There are a few other sayings, I've heard.

Mr Marchese: And he might even have some questions.

Mr Bruinink: You have a question? My time is running out; I need a question.

Mr Miller: I did want to thank you for coming in. I think you are raising some very worthwhile points. I happen to believe it makes sense to at least look at incineration. I think it's a lot better solution to dealing with Toronto's garbage problem than burying it in a landfill, which is just a time bomb. It then goes on to poison one of our most precious resources—that being water.

Mr Marchese: Composting.

Mr Miller: I like the idea. They have composting in the Netherlands as well. I think we need to look at the latest technology and explore incineration, and generate some electricity as well by solving Toronto's garbage problem and eliminating the 200 trucks or whatever it is, the 125 trucks a day that travel down the 401.

I'm also interested in a deposit-return system. In fact, I have a private member's bill I put forward a month or so ago to get the LCBO to establish a deposit-return system.

I would like to see a deposit-return system for all containers, including Tetra Paks and soft drink containers. I think there are a lot of environmental benefits. Do they have a deposit-return system there?

Mr Bruinink: Yes, they do. I'm glad you mentioned it. If you go to a supermarket, there is a conveyor and it has a screen in front. I put my number in, deposit the bottles, they disappear and out comes a piece of paper that says I'm owed two euros and 50 cents.

Mr Miller: I think that sort of system would work very well with these other ideas you have. I certainly will be pushing for many different environmental benefits that go along with the deposit-return system.

Mr Bruinink: I believe this plant is only the tip of the iceberg of what we can do to solve the problems of Toronto and Hamilton—I mean, it's having a problem right now. I hear Gravenhurst wants to bring garbage to London. It makes no economic sense. You can make money doing this.

Mr Miller: I thank you for coming in. I certainly think it's an idea that should be explored.

Mr Khalil Ramal (London-Fanshawe): You were talking about deposits and the things that used to be here in Canada a long time ago, five or six years ago. After Pepsi-Cola and Coca-Cola changed the bottling system, I guess they disappeared from the marketplace.

First, I want to thank you for coming, volunteering your time and effort to talk about this very important issue to all of us. Just a question to you: You're telling us you're volunteering yourself to go to Europe to investigate on behalf of the Ministry of the Environment?

Mr Bruinink: I would not go alone. I'm not technically inclined enough to just go by myself. I would like to see somebody from the government, one or two people, come with me. I will speak to these folks and be an interpreter at times, when necessary—I speak Dutch fluently. I can certainly act as the interpreter. When you start talking very technical, I may need more information, but other than that I'm well spoken in Dutch.

Mr Ramal: Volunteering your ability to communicate, that's what you're looking for. OK, that's it.

1420

Mr Bruinink: On my initial contact, I called the man and spent two hours with him. He told me as much as I could understand and we went from there and had some correspondence. I was very pleased that they invited me to come and see. We are sending people there. When my article appeared in the London Free Press about five weeks ago, this gentleman called me and said, "Your timing is impeccable. I would also like to visit this plant, because we are going to Europe." They're not going especially to see this plant—I hope that's understood—but during the trip they have also taken the time out to see it, and I think that's very important.

Mr Ramal: That's the Dutch plant?

Mr Bruinink: Yes, he's a businessman.

Mr Ramal: I'm talking about the facility. If we decided to go buy that system, we can to the Netherlands

and buy that system and apply it here? That's what I meant.

Mr Bruinink: Sorry?

Mr Ramal: It's made in the Netherlands?

Mr Bruinink: The building?

Mr Ramal: The technology.

Mr Bruinink: I have no idea who the producer of the plant is. Is that what you're speaking of?

Mr Ramal: Yes, the technology.

Mr Bruinink: I have no idea who the contractor is. I would suggest it's probably Dutch technology, but it could be elsewhere too. It may be a combination of many. As a matter of fact, I had calls from some Canadian companies that would also very much like to speak to the company and maybe work with them to do something here. That would probably be most—

Mr Ramal: I wonder if you are aware that we have a plant here, I think in Ottawa. It does the same things. That's what I mean.

Mr Bruinink: There are companies that make certain parts—

The Chair: Thank you. My last speaker is Mr Racco.

Mr Mario G. Racco (Thornhill): I come from a municipal background where the Keele Valley is located. I believe it's potentially the largest dump in Canada. We have been talking about this issue for many years. In Europe, which has been dealing with this issue for many more years than we have in Canada, they seem to have an answer to this problem. What do the Europeans do in general, not just Germany? Do the largest nations in Europe burn it? Do they dump it? Do they do something else? What do they do to dispose of their garbage?

Mr Bruinink: The countries that I have heard of—and I can't say I speak for every country in Europe—are doing much the same thing. In the Netherlands, a man said to me, "I'll do a fast calculation. If I do what you do, I need 18 soccer fields half a kilometre deep to bury my stuff. In 10 years from now, it will be one heap of dirt, because we have no room to put it." So they do it out of necessity. I think we're at that point too, where we have to start thinking out of necessity.

Can you imagine, if a dump is not totally sealed off below, the garbage that's going into the earth, if you will—and we don't know what's in it, because people put everything in it—seeps into our water base, the water base goes into the river and the river goes into the lake. We're going to be drinking that stuff later. Over time, as it seeps into the lakes and more and more communities—Strathroy, where I live close to, is now pumping water out of Lake Huron. It gets worse, and we're going to be drinking that stuff. I'm sitting here today, on May 20, 2004, and I can assure you that it will happen, that we're going to be drinking this stuff.

Mr Racco: Mr Bruinink, I'm sorry, I'll go back to the same question. I agree with what you said. I think all of us understand the reality. I'm trying to be clear in my mind because I'm not, as of today, after 20 or more years: Do you know how a number of countries in

Europe dispose of their garbage? Is it by incineration, generally speaking? What is it? Do you know?

Mr Bruinink: They all do it much the same way; like I said, Norway and Denmark.

Mr Racco: I'm sorry?

The Chair: Mr Racco, could you let him answer the question, please, and then our time is going to be up for this delegation.

Mr Bruinink: You were asking me what other countries are doing with their garbage, besides Holland.

Mr Racco: Yes.

Mr Bruinink: I can say Norway and Denmark—I think it was Denmark or Norway, either one of the two—do the same thing. They incinerate and create steam, and steam goes to the homes. Belgium does the same thing; Germany does the same, and France. These countries are all incinerating. They don't dump it in the ground.

The Chair: Mr Bruinink, on behalf of the standing committee on the Legislative Assembly, I'd like to thank you for your delegation. I appreciate your coming out today.

Mr Bruinink: I appreciate very much being here. I hope something very serious will come out of this. I know political wheels sometimes turn slowly. Thank you.

CAW WINDSOR

REGIONAL ENVIRONMENT COUNCIL

The Chair: Mr Bondy, if you'd like to come up. Welcome. I appreciate your coming out. I understand you're speaking on behalf of the CAW Windsor Regional Environment Council. Is that right?

Mr Ken Bondy: That's correct.

The Chair: You have 20 minutes to speak to this committee. Obviously this committee is interested, so if you can leave a little bit of time at the end of your 20 minutes, we may have some questions for you. For Hansard, if you would introduce yourself and indicate again who you are speaking on behalf of before you begin your delegation, I'd appreciate it.

Mr Marchese: Madam Chair, for clarity, it's 20 minutes in total. So the idea is to leave time before the 20 minutes are up for questions. Is that the way you're doing it?

The Chair: Mr Marchese, I'm going by the schedule I have before me. Individuals get 10 minutes and groups get 20 minutes.

Mr Marchese: I understood that. But I think you said that after the 20 minutes you would allow for questions.

The Chair: As long as we don't go over our schedule for the next delegation, then I'm going to allow some latitude.

Mr Marchese: Sure.

1430

The Chair: Welcome, Mr Bondy.

Mr Bondy: My name is Ken Bondy. I am the president of the CAW Windsor Regional Environment Council. Our council represents some 40,000 members—

autoworkers, specifically—on environmental issues in this area.

We are obviously concerned about the problems we face in waste management, particularly the issue of waste that travels through our community. I believe we're talking about somewhere in the range of 1.2 million tonnes of garbage each year transported by some 140 trucks that travel through our community. For those of you who aren't familiar with Windsor, we certainly have our own serious problems with truck traffic and border congestion, which adds to an already suffering air quality issue down here in the Windsor area. So we have a unique sense of the waste management problems that the Toronto area is dealing with as they bring this garbage over to Sumpter, Michigan.

Having said that, we are certainly here today to applaud and to support the government on this progressive move to not allow the Adams mine site to be used as a landfill. This is an area that we know is, to a certain extent, pristine but traditional to natives in the area; certainly a situation that would have created an out-of-sight, out-of-mind, only-to-come-back-and-haunt-us-later situation. So again, we are here to support Bill 49.

We in the auto industry have embarked on a campaign that is looking at several ways of handling waste. We are focusing obviously on vehicular waste, but there are a number of ways that we feel waste can be handled and dealt with in a proper manner that is going to move forward as we continue to run out of spaces to put our garbage. We would like to offer some of those suggestions to you here today. I've provided those to all of you in a copy of my memo.

The first suggestion we would like to make is regarding the province's involvement in an extended producer responsibility practices program. This is a process that has been discussed at great length. The delegation before me was talking about Dutch origins. Over in the European Union, EPR is alive and well today in many aspects of waste diversion, including vehicular waste. We feel this is a role that the governments, both federal and provincial, have to play here in Canada if we're going to move toward dealing with the loss of land due to landfills.

The second suggestion we have is regarding more communication and more co-operation between the Ministry of the Environment and the Ministry of Natural Resources. Most of the products that are going into landfills today are obviously created from raw resources, and it makes absolutely no sense to take raw materials out of the ground, manufacture them, use them and then rebury them when we know there are recycling and reuse capabilities rather than burying something we had already taken out of the ground for people's use.

The third suggestion we have is something that we believe is long overdue, and that is the government subsidization of the blue box program. Right now in Ontario, depending on what community you visit, there is a wide variation of collection processes going on, and we need to standardize that. There are opportunities, technology

today, by which we can collect many of the waste products being put into residential garbage, as well as commercial/industrial and such things as hazardous products that many people put into their residential garbage that go into our landfills and create an even bigger pollution problem that we have to deal with, either the leaching into our groundwater or off-gassing into our atmosphere.

Finally, we feel the province could do a better job using all streams of the media to communicate to these communities—to the residents, to the industries—on good waste reduction practices. Right now in the county of Essex, where we hail from, the Windsor-Essex Solid Waste Authority does put out a very useful calendar and chart, and many people follow that guideline. But quite frankly, there are other ways to put this information out into the public, whether it's through the use of newspapers or mailings directly from the government of Ontario or, again, the media through television. As representatives who work very hard with the corporations we are employed by to try to manage and reduce the amount of waste that comes out of industrial facilities, we know there is never enough education. Unfortunately, there are always people out there who either don't understand the processes or are not reminded enough of the proper way to handle waste reduction and waste diversion.

Again, on behalf of the members I represent, we want to congratulate the government on taking this progressive step. We would certainly be open to having any suggestions or discussions on how, as this government tackles waste diversion needs into the future, we can do a better job of creating a clean and safe environment for our future generations.

The Chair: Thank you, Mr Bondy. Mr Marchese?

Mr Marchese: Thank you, Mr Bondy, for your presentation. I've got three or four questions, and I'll make them as quick as I can. I won't name the political parties, but some political parties are more beholden to the corporations than others, so to your first point in terms of talking about extended product responsibility, it can be an issue for some, right? So while we say we need or ought to do this, we saw, when the previous guy was there making that point—because other people came and talked about the very points you made—that there was no ear to that particular suggestion, although at some point in the future we are all going to be affected, so we've got to do something. But in the meantime, how do you influence the corporate sector, and therefore political parties, to do suggestion number one, and number two as it relates to the very same issue?

Mr Bondy: We have attended a number of conferences that representatives from across the world have attended, and not Ontario but Canada as a whole is seriously lacking in the way we divert waste. You don't have to look any further than the European Union and the directives they have put in place to legislate waste diversion—the extended producer processes.

I think it would be advantageous for this government of today to open up dialogue with the federal government

so we can have a level playing field across this country on the way we handle extended producer responsibility. Finally, we have answered the criticism from industry that says this would not be cost-effective and would be unmanageable by once again looking at the European directive and showing an example of success.

Mr Marchese: My question, I guess, is how we influence the corporate sector to do the right thing, because governments are going to have a hell of a problem in terms of how to introduce policies that they resist. What do we do?

Mr Bondy: I think I can answer that question. You may not be aware, but right here in Windsor a year ago, an organization was created called the Centre for Environmental Health of Ontario. That was created from an outcry from the citizens in this community over the high rates of cancer, asthma and other illnesses that we feel are connected to the poor environmental factors we live within.

We have modelled that on an organization in Massachusetts called the Toxics Use Reduction Institute, which is supported by that state government. They have built partnerships with industry and actually subsidize partnerships with industry to prove that there are positive processes, and then they take other industries into that particular facility and show them that those processes can actually be done.

So I would say the answer to your question is that this government could certainly—and we are in the process of talking to the members of provincial Parliament in this area—look at financially supporting the Centre for Environmental Health and allow us to go forward and teach the industries how they can do this.

Mr Marchese: I understand. Thank you.

To your point about the hierarchy, I suspect most people don't have a sense of what you're talking about, but the hierarchy talks about reduction, reusing, and then recycling is at the bottom of that hierarchy. It's partly what we were trying to deal with with the last government, where they only dealt with recycling, and we were saying, "You've got to shift that around." Composting is part of that hierarchy, and that's again part of the educational problem we've got to engage in. I think we're all doing a poor job of educating, at the municipal level, the provincial level and the federal level. I'm assuming you're urging governments to do a better job of how we do that education.

Mr Bondy: Absolutely. The government has an ability to reach out into all the communities across the province and set an example of how things can be done properly, and, to go back to your first statement, to show that it is not only one particular sector of this province that you are supporting but that you're supporting the residents of each community in Ontario.

The Chair: Mr Brown?

Mr Michael A. Brown (Algoma-Manitoulin): Thank you, Mr Bondy, for being here with us. We appreciate your support for the act that's before us today.

I was just thinking, as I was listening to my colleague over there, about how we owe a debt to the labour movement in general for their very active participation in environmental issues, both in their own workplaces and in their communities. I think that's very important and I don't think we could have made the strides we have made without the labour movement being involved.

Because you're a CAW representative, maybe you could tell us a little about the reuse and recycling within your industry, what you've maybe seen within the last few years and what you expect to see, or would hope to see, within the next few.

Mr Bondy: To your first comment, I must say that we are very grateful to have been able to sit down and have full representation from Dwight Duncan, one of our members of provincial Parliament, as we developed the Centre for Environmental Health. So we do have a good working relationship with this government, certainly in this area.

Secondly, one of the biggest problems we have identified in the industries, and I'm talking particularly about General Motors and Ford, who employ a huge number of people in this area but also create a huge amount of trash, is that under the provincial regulations in place today, the way they manage their waste and what they look at as a cost-effective measure is simply to transport those things not allowed in municipal landfills across the border to the state of Michigan. We see that as a real problem, when you have different corporations utilizing out-of-province or out-of-country landfill. Not only is that not answering the larger environmental question as people who have to live on this planet, but it also takes away from the revenue that could sustain our municipal landfills, and because we lose that business, there are increased tipping fees and more issues and problems that I think cause people to do illegal dumping because they don't want to pay the tipping fees. It's something we've taken to the attention of the corporations here in Windsor many times. The issue has never been answered to us, and it's something I would encourage this government to look at: Is there a way we can talk to those industries that are transporting trash across the border to handle that here at home and utilize the regulations and the landfills that are in place in each municipality?

1440

The Chair: Thank you, Mr Bondy. We're running out of time.

Mr Wilkinson, do you have a very quick question?

Mr John Wilkinson (Perth-Middlesex): No, I would offer my time to make sure all three parties have an opportunity.

The Chair: OK. There are no more speakers, and we're out of time. On behalf of the standing committee on the Legislative Assembly, I'd like to thank you for coming out today and for your delegation.

Mr Bondy: Thank you very much for coming to Windsor.

DANIEL ACCIAVATTI

The Chair: Our next speaker Daniel Acciavatti. Is he here? Have I said your name right?

Mr Daniel Acciavatti: You did better than most.

The Chair: Thank you. Welcome to the standing committee on the Legislative Assembly. I appreciate your coming out. I understand you're here from Michigan, so I'm going to provide you with a little more time since you've come a great distance to see us. Could I ask that you introduce yourself and the group you represent for Hansard, so we get a record of that?

Mr Acciavatti: I am state representative Dan Acciavatti. My legislative district is basically right across from Sarnia. I was running a little late because we didn't get out of session in Lansing until after noon. Luckily there was no backup at the bridge. I guess I'm here representing myself, hopefully giving a different view, the Michigan view, on this problem.

First of all, I'd like to thank you for allowing me to be here. I consider Ontario our friends, our neighbours. We're bound by geography, and I consider it a great honour to be asked to come before you. I handed out the written testimony I'm going to give, along with a resolution. So I'll give that testimony and then leave some time at the end for questions.

Did I fulfill your first request?

The Chair: Yes, you did. Thank you.

Mr Acciavatti: I appreciate the opportunity to speak with you today regarding the Adams Mine Lake Act and the issues surrounding it. I hope my testimony will provide you with a different angle on this issue, from the perspective of your friends and neighbours in south-eastern Michigan.

My name is Daniel Acciavatti, and I am a state representative in the Michigan Legislature. I represent an area that stretches from the northern shore of Lake St Clair to the outskirts of Port Huron, in what could be described as the base of the thumb in Michigan and home of Pine Tree Acres, near Lenox township.

While I am not entirely familiar with the pros and cons of the Adams mine project, I am aware that its future has been in limbo for more than a decade, and residents in Ontario and Michigan have been hopeful that the Adams mine, in combination with the expansion of existing landfills and waste diversion programs, would deliver the "in Ontario" solution to the landfill disposal crisis that has proven to be so elusive.

I am also aware that significant political and environmental obstacles stand in the way of the Adams mine ever being approved for operation, to the point that the site's continued presence in the debate may only serve to draw attention and resources away from other, more viable solutions to resolve Ontario's disposal crisis.

One thing I am certain of, however, is that Michigan residents, and particularly my constituents, will view the demise of the Adams mine project as evidence that Ontario is abandoning efforts to create the "in Ontario" solution that has been pursued for so many years, and

that the province is unconcerned with the amount of solid waste being shipped across the border to Michigan landfills, unless the decision to end consideration of the Adams mine site is accompanied by concrete steps to address the problem elsewhere.

From my perspective, the decision to build or abandon the Adams mine project is not the one that will ultimately define Ontario's position on resolving the disposal crisis. What truly matters is whether the decision to abandon this particular site is followed up by meaningful action that demonstrates both the vision and political will to get the job done.

1450

At this point, I believe it is important to state that I have been very impressed with Ontario's efforts to reduce the amount of waste going into the waste stream, your diversion efforts. The emphasis placed by the province on recycling programs and other ways to reduce solid waste generation is definitely laudable. I was also greatly impressed by the decision to achieve an Ontario-wide diversion goal of 60% by 2008.

Additionally, I was encouraged to read that provincial government leaders understand that a review of the environmental assessment process is needed to ensure it functions as a valuable part of the approvals process for landfill siting and expansion and not as an impediment to progress on this issue. And I do believe there needs to be progress on this issue in Ontario.

While your promotion and application of the three Rs—reduce, reuse and recycle—is clearly a worthy project and a laudable goal, I believe the progress you are making is coming in large part at the expense of my constituents, who are seeing the landfills that were designed to hold Metro Detroit's waste well into the future being filled much more quickly than anticipated, as they not only serve one but two major metropolitan areas at this time. Many of those whom I represent feel very strongly that years of local planning for the future needs of our communities are going down the drain because Toronto—and by extension Ontario—is simply unable or unwilling to take care of a basic municipal need.

I had the pleasure of visiting Toronto in April as part of a delegation from the Michigan House of Representatives. I and two of my colleagues met with local and provincial business and government leaders to discuss our issues of mutual concern. Some of those issues were border crossing issues, economic development issues and water quality issues, and of course this solid waste issue was one of the many topics we discussed.

We had the opportunity during our visit to tour some of the incredible recycling facilities that are currently in operation in Toronto and to gain a little bit of insight into the progress being made toward the diversion goals set by the province. But it is clear that even with the great progress that has been made to date, the city of Toronto still needs to send a significant amount of its trash to landfills. It is also clear to me that the province of Ontario is totally unprepared and unable to meet the

needs of its largest city on this issue. When I asked city officials if there was a backup plan for solid waste disposal should Michigan landfills, for whatever reason, become unavailable, I was stunned to hear the answer was no. Other than a two-day storage capacity at transfer stations, there is no place Toronto can go with its garbage other than Michigan.

The simple fact of the matter is that even with the diversion efforts that are currently in place, the city of Toronto and the province of Ontario are still going to produce a certain amount of waste that will need to be landfilled. And until such time as 100% of the waste is recycled, reused or otherwise diverted from the waste stream, the responsible course of action for your government to take is to ensure that Ontario has adequate capacity to landfill that waste stream.

I'm here today to ask you to not let Michigan shoulder the burden of all of this waste stream alone. I am aware that the Adams mine site is not the only option available to you. Expansions of current landfill sites are under consideration in Warwick, Richmond and Green Lane. I believe the Warwick site in particular has been in the planning and approval process for nearly five years.

I want to close by noting a story I read in the Toronto Star on April 20 of this year. The headline of the story is "Don't Dump on Us, Halton Pleads." The first paragraph of the story caught my eye. It read, "The spectre of 125 tractor-trailer loads a day of Toronto's garbage being trucked to Halton's landfill site has regional chair Joyce Savoline more than a little concerned these days." I personally can sympathize with Ms Savoline's concerns on this issue, because the trash that she only worries about ultimately ends up in my district. I see those trucks every day. I see the additional wear and tear they cause on our highways. I hear the complaints from municipal officials and constituents who are concerned that our landfills are rapidly filling with trash from another country. As an elected official, I am under heavy pressure to find ways to reduce or stop that inflow. This too is the reality you must face as you consider this issue.

For your consideration, I have distributed copies of a resolution that I have sponsored in the Michigan House of Representatives urging Ontario officials to take prompt action on this issue. I hope you will take time to consider that resolution, which will be taken up in committee and in the full House in the coming weeks.

As you deliberate on this legislation that would remove a potential landfill site from consideration forever, I strongly encourage you—I urge you—to redouble your efforts to increase Ontario's landfill capacity so that your province will be able to meet the needs of its citizens.

I just want to again say that I really appreciate being here. Thank you for allowing me to speak, and I would take any specific questions you may have at this time.

1450

Mr Toby Barrett (Haldimand-Norfolk-Brant): Thank you, Mr Acciavatti. Your House resolution more specifically urges the Ontario Ministry of the Environment to establish new landfills and landfill expansions.

As you've indicated, what's going on in Ontario is in large part at the expense of your constituents. I understand there's also a House bill that's now law that requires garbage—Canadian or out-of-state waste—to meet Michigan standards. I just wondered if you've had any evidence now of how well Ontario would hold up to the Michigan standards. I know there's something like at least 11 bills from you and state senators calling, in part, for tougher measures to reduce or prevent waste from coming in.

Mr Acciavatti: If I could maybe give a little longer answer, if I've got time, and go into the history a little bit and why we're here. I'm sure a lot of you already know this history, but I think it would add to the conversation a little bit.

Mr Barrett: I know your mother was involved a number of years ago.

Mr Acciavatti: Yes, she was, and she was very inspirational in me getting involved in politics to begin with. In 1978—so we're talking over 25 years ago—the leaders of Michigan had the vision to adopt the Solid Waste Management Act. That act had a number of mechanisms in place that basically said that every county, every municipality, had to have a long-term goal to deal with their solid waste. There were a bunch of mechanisms put in place—must-site language. In St Clair county, for example, if we didn't have enough capacity to deal with our waste long-term and into the future, then a mechanism kicked in that said you must site a landfill. As a result, we ended up with a glut of landfill space. It was a very unfortunate, unintended consequence, I believe, of the legislation, and the leaders back in that day didn't necessarily see what was coming at them.

In 1989, when my mother was chairwoman of the St Clair county board of commissioners, which is right across from Sarnia and the Blue Water Bridge, that's when this whole issue kind of came up, with the Fort Gratiot landfill case. The Supreme Court came down and gave their ruling, the interstate commerce clause, and it pretty much put us to where we are today.

Nothing significantly has been done with state law since that Supreme Court ruling. The package of bills that you spoke of was the first significant package of bills to change state law since then. Essentially, that package does a number of things. The heart of the package was to say that any waste coming into our landfills needs to meet our standards.

From my visit to Toronto, I would say that the city of Toronto does a tremendous job. I would argue that your waste stream is very clean and I would argue that it will probably meet our standards at the end of the day.

Mr Barrett: Just to follow up, I know that to other state legislators it's a concern, and I know that Tom Ridge of homeland security has been approached with respect to the possibility of anything coming across in one of these tractor-trailers that could threaten the population of the state of Michigan.

Secondly, I know that down in this part of North America you have a problem with the emerald ash borer,

which we're desperately hoping doesn't move farther east by the same token. One of your colleagues has pointed out that Toronto has a problem with the Asian long-horned beetle. Twenty-five percent of the waste that comes from Toronto to your state is yard waste, according to your environment department's figures.

Could you comment on those two things, both security and, secondly, invasive species?

Mr Acciavatti: Absolutely. On the security side, in the global world we live in, Candice Miller was instrumental in bringing Tom Ridge to the Blue Water Bridge area. I think he went on both sides of the bridge and looked at that crossing from a homeland security standpoint. The homeland security issue is a concern. In the global world we live in, there's a real possibility that we could end up at an orange or red homeland security level, which would affect those border crossings. So that definitely brings into conversation a whole different part of it.

Yard waste is not allowed in our landfills, so that is going to pose a problem. That's one of the prohibited items, along with bottles and cans. We have a very expansive recycling bill that we use.

As for the emerald ash borer, it has devastated the ash tree population in my district and right across the river in Macomb, Oakland, Wayne and St Clair counties. It's a tremendous problem. Any other invasive species that could potentially get into our country or into your country from our country is something that is a concern and would pose a risk to our public, our health and our safety, which wouldn't help with all this and would be a concern of mine.

Mr Marchese: I appreciate your coming and I share your concern, and I would do the same, by the way. It's crazy that a province can't take care of its own problems and has to ship the problem of garbage outside its own borders.

Do you have an opinion on the issue of taking garbage to a mine site? That's what we're dealing with.

Mr Acciavatti: I know. I wanted to speak more to the concept of keeping all landfill options on the table, like we do, like the policies that we have in Michigan. The specific environmental challenges you have with that site I think are tremendous. I don't know in detail the pros and cons, unfortunately. I wish I did. I do know there are some challenges there.

Mr Marchese: There are three political parties. America only has two, but we've got three. We're on the left here, and we oppose the idea of taking garbage to a mine site. We think it's wrong. That's why we support the Liberal government that introduced this bill in terms of preventing the disposal of waste in a mine site. We think it's a dangerous thing for future generations. That's why I asked you whether you have an opinion in that regard.

But it is a problem and we've got to deal with it. How are you dealing with that in Michigan, in terms of your own waste?

The Chair: Can I interrupt for just a second? Could you make it a quick answer on this one? I still have another speaker, and we have about three minutes left.

Mr Acciavatti: OK.

Mr Marchese: I'd be curious to know.

Mr Acciavatti: We have a very detailed solid waste management plan that has must-site language in there, that we site landfills when they must be sited. I think there aren't as many obstacles that we have to jump through. We now have a moratorium—in one of those bills—on new landfills and we're kind of moving in the direction of your province on that issue. But right now, we have must-site language; regardless of the environmental consequences, you must site a landfill. There are obviously very strict standards they have to meet in how they're constructed and how the cells are built to make sure they're safe, to make sure they're put in the right place, but that must-site language is there.

Mr Ramal: Just a quick question. If we are meeting our government's standard to ensure that *[Inaudible]* use landfill to take our garbage there. Why are you objecting to the whole issue, if we're meeting all the standards and stuff that we have to meet?

Mr Acciavatti: I don't think you are meeting the standards just yet. We don't allow any yard waste, bottles and cans. Besides that, I think you have a very clean waste stream and I think you are meeting the standards. Therefore, on the basis of the federal commerce clause and the Supreme Court ruling, it can't be stopped.

I am objecting because I've got 250 trucks a day coming over the Blue Water Bridge through my district, on my roads, past my constituents' houses, and they're banging on my door every day to stop it. It's a horrible perception problem. We're friends, we're neighbours, and we're bound by geography, but unfortunately this issue is beginning to shape our relationship with the residents of Michigan. That's why I'm here.

The Chair: Mr Acciavatti, I appreciate your coming, and we thank you for your delegation.

1500

RESPONSIBLE ENVIRONMENTAL AND ECONOMIC PROSPERITY ASSOCIATION

The Chair: Our next delegation is Martha McSherry. Welcome to the standing committee on the Legislative Assembly. We appreciate your appearing before us today. I understand you're speaking for the Responsible Environmental and Economic Prosperity Association. Is that right?

Ms Martha McSherry: That's correct.

The Chair: You have 20 minutes. We'd appreciate if you would begin with introducing yourself and the organization for Hansard.

Ms McSherry: OK. Again, my name is Martha McSherry. I'm from Kirkland Lake, Ontario, which is about 10 kilometres from the Adams mine site. I've happened to live in that area for the last 25 years. I did grow up in southwestern Ontario.

REEPA, which stands for Responsible Environmental and Economic Prosperity Association, first got started when the Adams mine site came up as a possibility, and

that was back in 1989. Shall I carry on with my presentation, then? I think everyone has a copy of it.

Thank you for this opportunity to present at today's hearing. I am here representing REEPA, a group that has been in existence for 15 years. REEPA members are concerned with the idea of dumping garbage in the Adams mine, which is a former open-pit mine that has crumbling pit walls from 27 years of mining and blasting for iron ore. The pits are in direct contact with groundwater, levelling off with the surrounding water table. The Adams mine site is south of the Arctic watershed where water systems are divided, flowing north and south. Waters flowing from the Adams mine site flow into a river system that feeds a rich farm basin in south Timiskaming, which then flows into the Ottawa River Valley system. Bill 49 is protecting the headwaters of that watershed.

There are three main points that REEPA wants to discuss with respect to the act to prevent disposal of waste at the Adams Mine site.

First, the Liberal government is to be commended for taking the leadership to protect water in lakes from waste in the province of Ontario. Ms Dombrowsky, Minister of the Environment, was quoted recently in the media, "The endless proposals and challenges around the Adams mine have created too much uncertainty, and for too long have drained the energy and resources of the local communities."

This quote sums up exactly what has been going on for the past 15 years in the district of Timiskaming. Unfortunately, as long as the Adams mine site was seen as a possible destination for Toronto's waste—a total of 15 years—there has not been any serious waste management by the city of Toronto. In addition, citizens opposed to the dumping of waste have spent valuable time and energy protecting our environment, time that could have been devoted to community economic and social development.

The second point in this presentation is that the Liberal government's leadership for setting aggressive targets for diversion and recycling, with specific timelines, needs to be commended. We look forward to product stewardship, closing the loop on toxics, diversion of compost and recyclables from landfill, packaging reductions, research and development, and the seeking out of markets for recyclables.

The landfill crisis that looms over Toronto can only be prevented through strategic waste planning. There are numerous examples in Canada, the United States and Europe of how other major centres have achieved 60% to 80% diversion from landfill.

The third point of this presentation is to bring to the attention of this hearing the weakening of citizen participation in the process of protecting their environment during the Harris government reign. Citizens experienced the loss of the intervenor funding act, which provided an opportunity for awarding citizens' groups with funds when a project went to the hearing stage. The limited funds that may have been awarded came late in the hearing stage, when they were very much needed in the

investigation stage prior to a hearing. Without the intervenor funding act, proponents of a project are favoured over the opponents. In the case of the Adams mine, the project moved ahead quickly without proper examination of the consequences to the environment.

Citizens were further hampered from participation in the Adams mine hearing when the Harris government proceeded to weaken the Environmental Assessment Act—I'll continue to call it the EAA—again perceived as favouring the proponents of the Adams mine. It was REEPA's experience that a lawyer, Mr Robert Power, represented proponents. In this case, it was Toronto, Adams Mine Rail Haul and the provincial Tory government. This particular lawyer was in a strategic position to influence the legislated changes to the EAA in that the Adams mine hearing was streamlined to look only at one issue: hydraulic containment. In other words, will the pumps work?

The EA process is a good planning tool if it is done the way it was originally designed, and applied sincerely. A full EA establishes need, examines all aspects of a project, looks at the good and the bad consequences, examines alternatives, strives to lessen adverse effects, and only then is a decision made on whether to go ahead with a project.

In the case of the Adams mine, the hearing was streamlined, taking 15 days, when most projects of similar size would have taken one to two years to complete. The streamlining of the EA on the Adams mine did not look at the need for the project. It did not look at the extent of the consequences of the project. All criticisms, weaknesses and shortcomings were not responded to at the EA hearing. There was no clear plan by the proponents at the time of the hearing on how the toxic leachate would be treated when pumped from the pits. As well, there was no clear plan on where the billions of tonnes of toxic leachate would be disposed of.

Despite these flaws with the EA hearing, the EA panel of three was split at the end of the 15-day hearing. One panel member outlined very solid reasons why the project should not go ahead. Two panel members were undecided, outlining numerous conditions that needed to be met before a final decision could be made on whether the site was suitable for waste. One of the conditions involved drilling a borehole under the proposed pit to further investigate whether hydraulic containment would work. The EA panel left the final decision on the Adams mine site at the discretion of the Minister of the Environment.

Citizens had to raise thousands of dollars to have the borehole drilling results examined by a scientist. The results indicated a high potential for leakage at the bottom of the pit.

Despite the limitations of the streamlined EA hearing on the Adams mine, the fact the EA hearing panel did not deliver a final deliberation on the site and that there were differing results on the borehole tests done at the bottom of the pit, the proponents received a certificate of approval on the Adams mine site.

I have taken the time to provide the details on why and how citizens have been limited from participating in the Adams mine EA process. It is our hope that the Liberal government will make changes to ensure that citizens in this province have an equal and just opportunity to make a full contribution to protecting their environment. The Adams mine scenario is a lesson for all of us on the risks of cutting the red tape to favour the proponents of projects that can have major environmental consequences.

In conclusion, REEPA commends the Liberal government for their leadership in preventing the disposal of waste in the Adams mine site and for amending the EPA in respect of the disposal of waste in lakes. In addition, REEPA commends the leadership around waste management in the province, setting targets and timelines.

Finally, REEPA asks that efforts be made to ensure there is a full and equal opportunity for citizen involvement in the EA process through reinstating the intervenor funding act, and that the full Environmental Assessment Act be reinstated such that projects undergo a full environmental assessment hearing as was originally intended.

The Chair: Mr Marchese, did you have any questions?

Mr Marchese: Sure. Thank you for your presentation. New Democrats introduced the intervenor funding, when we were in government, for a good reason. We know that when people are trying to defend something—rightfully or wrongfully—citizens don't have the money to defend themselves or to defend a public interest. So that was the purpose of the intervenor funding. I think if we don't have that, it weakens your possibility and the right of citizens to be able to intervene.

I wondered, have you had any success with anyone within government in terms of getting a hearing on this issue; any sympathetic ear from any one member or two or three or four, the ministry or the policy assistants of the minister—anything?

Ms McSherry: We've been too busy fighting the Adams mine to have time for anything else.

Mr Marchese: But today is an opportunity for many of them to say, "We're going to move on that."

Ms McSherry: That's why I'm here. I've come all the way from Kirkland Lake.

Mr Marchese: Thank you for coming.

Mr Miller: I'd first of all like to thank you for coming all the way from Kirkland Lake. It's unfortunate that this committee couldn't meet in Kirkland Lake to save you the drive.

Ms McSherry: Or even in the north—Sudbury or North Bay. Why here?

Mr Marchese: I would have gone there too.

Mr Brown: I would have too.

Mr Miller: So would I. So thank you for coming.

Ms McSherry: We honestly thought you didn't want us here and that's why you held the hearing here. We really are quite suspicious of government.

Mr Miller: Well, thank you for coming. I just wanted to hear if you had any ideas about what Toronto should do to deal with its garbage problems.

1510

Ms McSherry: Again, there are incredible stories. I'm in no position to travel around the country and the world. I can only tell you what I read. There are many communities around the world doing incredible things around diversion, reusing, recycling.

Mr Miller: How do you feel about a deposit return system?

Ms McSherry: Absolutely.

Mr Miller: I happen to have a private member's bill put forward to put in place a deposit return system, so I wanted to get a plug in for that. I've noticed that out in British Columbia they are far more successful than we are in terms of capturing bottles and all kinds of other containers. In their deposit return system, they capture something like 86%, whereas with our curbside system, it's something like 35%. So you're in favour of deposit return systems?

Ms McSherry: Absolutely.

Mr Miller: Any other ideas, just broadly?

Ms McSherry: I heard an earlier speaker talk about incineration, and I think there were some challenges and questions around that. I can honestly say our group is not in favour of incineration. We're also confronted with an incinerator in our community. It would be for toxic waste, hazardous waste. We have had people from the EPA in the States—Dr Paul Connett; some of you may know him—up to our area. Incineration is just another way of burning trash and converting it into a more toxic form. We don't lose it, we still have to landfill it and it can still spew very toxic gases and vapours off into the environment, particularly if the scrubbers aren't working or there's a power failure or whatever.

So I'm not sitting here promoting incineration. I think it has to come right down to individual citizens and industries doing what they can to reduce, reuse, recycle and taking government action to reduce packaging, to standardize packaging—all those tough measures that have to be taken. Fifteen years have gone by and nothing has been done. It's just so tragic: 15 years of lost time on the Adams mine.

Mr Miller: Thank you for coming today.

The Chair: Ms McSherry, based on your earlier comments, I just wanted to assure you that this committee on the Legislative Assembly, to a member, wanted to go up to Kirkland Lake. This was a negotiated settlement between our House leaders.

My next speaker is Mr Ramal.

Mr Ramal: Your point about why are we here in Windsor—I guess that for our government, our commitment is that all people are participants, so that's why we're here and we are travelling across this province, to listen to the public, to listen to institutions in order to strengthen our position and also to make sure we have enough consultation with all the people. I would imagine we are here in Windsor, as you heard a few minutes ago,

to listen to members from the Legislature of Michigan, and also because there are a lot of older trucks that pass through Windsor.

I heard you talking about incinerators and all this stuff. You heard the first speaker talk about environmentally friendly institutions or facilities that would help to observe and digest all this solid waste. You are against it, too?

Ms McSherry: I can tell you, from our point of view, incineration is not something we're favouring in our community, because we are confronted with an incinerator right now.

Mr Ramal: No, but I'm talking about if it was proven to be environmentally friendly.

Ms McSherry: Again, I'd have to hear all the information. We'd have to go through a process, just like—that was the challenge with the Adams mine. We had scientists on each side and, depending on who funded them, you'd get their expert opinion. Who, in the end, do you decide upon? Those are the kinds of tough challenges we all have, based on the science we're hearing.

Mr Marchese: That's why intervenor funding is important, isn't it?

Ms McSherry: Absolutely, it's important.

Mr Ramal: That's why we are here to listen to you. Also, you know the direction of our government and our Minister of the Environment is clear on this matter: We are against it. That's why we are listening to more, to strengthen our position and to introduce a bill to stop people from filling abandoned mines like Adams mine. We share the same views. That's my comment. That's it.

Mr Marchese: Intervenor funding: Do you support that too?

Mr Brown: I think my friend from downtown Toronto is a little creative with the intervenor funding history, but nevertheless—

Mr Marchese: What do you mean?

Mr Brown: There was actually intervenor funding approved before you.

Mr Marchese: That's even better.

Mr Brown: Yes, I know.

The Chair: Mr Brown has the floor. We have a delegation.

Mr Brown: I just wanted to thank you for coming. It's unusual to be in Canada, looking north to our American friends. Mr Oraziotti and I both represent northern constituencies, and we do appreciate you coming all the way to one of the southernmost parts of Canada to make your presentation.

I know the hard work of the folks in the Timiskaming area, even across the province, having visited Belle Vallée and other places in the clay belt in that part of the world. Clearly, this will bring some certainty to your part of the world. As you mentioned before, having this settled will perhaps create a climate for greater economic opportunity in the area. Would that be a fair assumption?

Ms McSherry: I think more energy can go in that direction.

Mr Brown: I served in the Legislature in the early 1990s with a Liberal member from, in those days, St George-St David, Mr Ian Scott, the former Attorney General. He would occasionally get up in the Legislature and say, "Garbage: What problem? My constituents have no problem with garbage. They come in a truck and it goes away."

Ian said that a bit tongue-in-cheek, of course, but in our large urban centres, like the city of Toronto and perhaps some others, we haven't given this much consideration during the last 10 to 15 years. I want to assure you that the government is moving forward and looking at the Environmental Assessment Act, looking at a way we can streamline but at the same time make sure everyone is heard and that all views are taken into account in the environmental assessment process. Because we do have to find some solutions here and we need some good solutions. I just wanted to thank you for coming.

The Chair: Thank you, Ms McSherry. We appreciate your appearing before the standing committee on the Legislative Assembly and appreciate your coming all the way down. Thank you very much for your delegation.

We're going to be waiting for the Minister of the Environment. I believe she is in transit. Until she is here, perhaps we can call a 10-minute recess.

The committee recessed from 1515 to 1525.

MINISTER OF THE ENVIRONMENT

The Chair: We'll resume our meeting. The Minister of the Environment is here. Welcome. Thank you for coming and appearing before the standing committee on the Legislative Assembly to speak to Bill 49, An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes.

Hon Leona Dombrowsky (Minister of the Environment): Thank you very much, Madam Chair. I am very pleased to have this opportunity to take part in the public consultation on a very important piece of legislation, Bill 49, the Adams Mine Lake Act, 2004. Bill 49 is an important part of the McGuinty government's commitment to deliver real, positive change. We believe that Ontarians deserve a cleaner environment and cleaner communities that benefit the people who live in them.

Bill 49 is immediately important to the northern Ontario communities most directly affected by the Adams mine proposal. But the act also sets important protections and precedents for all communities. That is why I believe it is important to hear the voice of the people in Windsor and in other communities across Ontario. I want to share with you my thoughts on how the Adams Mine Lake Act would help achieve our goal of clean, safe, livable communities across Ontario.

Adams mine has been subjected to endless rounds of proposals and challenges. This debate has been a source of great uncertainty. It has drained the energy and resources of local communities. For too long, it has created divisiveness. The local community has repeatedly voiced

concerns about the Adams mine landfill. We heard those concerns and we took action with Bill 49, which stops the Adams mine proposal.

The protection of our communities is of paramount concern. We are not convinced that the Adams mine proposal could be operated safely to protect the environment. The act we are discussing today is about protecting our environment. It's about protecting our water sources, respecting our communities and ensuring fairness.

I will now outline the contents of Bill 49 and how it relates to our efforts to protect health and the quality of life enjoyed in our great province. I will talk about the bill as part of the waste management strategy.

The Adams Mine Lake Act, 2004, has three objectives. The first is to prohibit the use of lakes as landfill sites. For the purposes of the bill, a lake includes surface waters that are a result of human activities like the one in the Adams mine. It does not apply to bodies of water that are less than one hectare in area. Bill 49 also would not apply to the disposal of inert fill in lakes or to the disposal of mine tailings.

Second, the proposed legislation would prevent the use of the Adams mine site as a landfill. It would revoke all approvals and permits issued by the Ministry of the Environment prior to the date the legislation takes effect. The proposed legislation would also nullify any applications for permits that are under consideration by the ministry on the date the legislation comes into effect. The proposed legislation would extinguish any agreement of purchase and sale of the adjacent crown land that may have been entered into between the Ministry of Natural Resources and the owner of Adams mine.

Thirdly, Bill 49 would address matters related to the government's actions to stop the Adams mine proposal. Further, any related legal action against the crown that may exist on the date the proposed legislation comes into effect is extinguished by the proposed legislation. The Adams Mine Lake Act, 2004, would also prevent any further legal action being taken against the crown as a result of the legislation.

I want to be clear that Bill 49 is not an expropriation of the Adams mine property. The Adams Mine Lake Act would require the province to pay the owner of the Adams mine compensation for reasonable expenses paid prior to the date of first reading of the bill.

Under Bill 49, expenses would be defined as costs incurred for the purpose of developing the Adams mine landfill. These expenses would include the acquisition of the Adams mine site, surveys, studies and testing, engineering and design services, legal services, marketing and promotion, property taxes, seeking government approvals and seeking acquisition of crown land.

Compensation would not be paid for any future profits the owner may or may not have received as a result of operating a landfill at the Adams mine site. The amount of compensation would be determined based on the expenses minus the fair market value of the site on the date the legislation comes into force.

The Adams Mine Lake Act adds up to an excellent piece of legislation that protects the environment and people of Ontario, and that is fair to the owner of the Adams mine. We want to ensure that the owner receives reasonable reimbursements for the costs that have been paid as part of the proposal to use Adams mine as a landfill.

Our foremost concern is the health and well-being of the people of Ontario. They deserve the peace of mind that comes with knowing that their environment is being protected and their concerns are being addressed by the government. People also need confidence that the government is committed to better managing Ontario's waste and reducing the province's reliance on landfills.

The McGuinty government understands that stopping the Adams mine proposal does not address the root of our current waste management challenge. As Ontarians, we simply must reduce our reliance upon landfills. As the situation now stands, despite strong gains through diversion programs, we are still generating too much waste and sending it to landfill. Increased waste generation is already compromising the gains we have made through diversion. Future population growth will put even greater demands on our waste management system. Landfill space is limited and, as the people of Windsor are well aware, some communities are already relying heavily on shipping waste to Michigan.

There are a number of factors that could lead to increased costs, not to mention significant disruptions at US borders that could affect Ontario waste exports. As we are now doing with electricity, we need to create a culture that values conservation, not consumption. Ontario has set an ambitious new provincial target to divert 60% of waste from disposal by 2008. Our government has announced a new strategy to manage Ontario's waste and reduce the burden on landfills in the province and in other areas. It is a far-reaching strategy that will help us by setting targets for waste diversion over the next four years.

1530

Also, we will release a discussion paper in the coming weeks and consult across the province. Other issues to be considered through the discussion paper include a ban on organics and recyclables in landfills, the expansion of central composting facilities, and the role of new technologies to help Ontario divert more waste from landfills.

Our strategy will also address root issues with the environmental assessment process that have led to so much uncertainty for so long. Our government has made a commitment to establish an expert advisory panel to identify ways to improve the environmental assessment process to provide greater certainty and timeliness while maintaining or enhancing environmental protection.

Our goal is to increase waste diversion, to help address the issues with landfill siting and to give the public more confidence in the process. This is an action that is long past due. We have a system in place in the province right now where basically it can take between eight and 12 years to site a landfill. It can be a very expensive under-

taking. Our government recognizes that for municipalities, it is an onerous undertaking. We believe we must improve the process so that we have a process where there is still regard given to the environment and at the same time we are able to achieve siting facilities—landfills and composting facilities—that will enable us to achieve our diversion goals.

As well, we have entered into a draft framework agreement with the federal government to coordinate the environmental assessment of projects that are subject to both the provincial and federal process. Environmental assessments should be about clarity, not pointless repetition. The agreement has been posted on the Environmental Bill of Rights registry. The 30-day comment period ended last week.

It is important that this committee understand the full context around the Adams Mine Lake Act. The important protection measures contained in the act are part of a broad plan to ensure our province's waste management plan is sustainable and responsible. At the Ministry of the Environment we are working to meet this goal through far-reaching actions to protect the precious natural resources that are so fundamental to our health and way of life.

We are developing a comprehensive source-to-tap system for protecting the water we all must drink. We are improving the protection of Ontario's air by making sure that all sectors make their fair-share contribution to reducing emissions that foul our air. We have brought in an ambitious plan to divert 60% of waste from disposal by 2008. The Adams Mine Lake Act is an important addition to these efforts. It flows from our belief that we need cleaner water, cleaner air and cleaner communities for people to call home.

While we have put a lot of hard work into making the proposed legislation responsive to the needs of Ontarians, there is always room for refinement, which is why I'm very delighted that we have also provided this opportunity for the public to provide input as we move forward on this legislation. I am looking forward to hearing your thoughts on Bill 49, the Adams Mine Lake Act.

The Chair: Thank you, Minister. Mr Miller?

Mr Miller: Thank you, Minister, for coming to this committee today. In your opening statement you talked about wanting a cleaner environment and cleaner communities. Does that also include having less roadside litter?

Hon Mrs Dombrowsky: Of course.

Mr Miller: OK. In the province of British Columbia, where they have a deposit-return system, they have 50% less roadside litter than we have here in Ontario, because the deposit-return system is so effective. They also have a much higher capture rate in terms of the containers—not just liquor and wine bottles, but all containers, whether it be soft drink containers, Tetra Paks. They have an 86% capture rate versus 35% here in Ontario. Ontario recovers 40% less material than British Columbia, which has a comprehensive deposit-return system.

It's my feeling that if we implemented a deposit-return system, it would help your government's stated goal of trying to accomplish the 60% diversion rate. I see many other environmental benefits with having a deposit-return system: less airborne pollutants, fewer barrels of oil consumed—there's a long list, and some real obvious ones. How do you feel about a deposit-return system?

1540

Hon Mrs Dombrowsky: I think that Mr Miller has made some very valid points.

I'm sure the member would also be very aware of Waste Diversion Ontario and the role it plays to assist the government in implementing diversion plans for the province, in bringing to the government a plan to increase diversion across the province.

Waste Diversion Ontario is actually in the process of preparing that plan. It has not yet been finalized. I look forward in the coming weeks to receiving that plan. I will be very eager to look at the new options, because obviously we've made our goal of 60% diversion very clear to Waste Diversion Ontario. They are aware that there is an acute need to increase what is at the present time being diverted from landfill in the province of Ontario. I think the overall provincial average is in the neighbourhood of 30%. We want to double that. So I expect there will be a wide range of options for this ministry and this government to consider.

Mr Miller: I certainly hope that a deposit-return system is on the list of things to be considered, and perhaps could be implemented by Waste Diversion Ontario. I think there are some real, clear environmental benefits that could be achieved for the province, so I certainly hope you take a look at that.

Just as a general question, don't you think the province should be dealing with our own garbage and solid waste within the boundaries of Ontario? We just had a state representative here.

Hon Mrs Dombrowsky: Yes, actually, I've had the pleasure of meeting Representative Acciavatti, along with two other representatives from the state of Michigan. On that occasion, I took the opportunity to explain to him how seriously our government took waste management issues, that we believed that one way to better manage municipal solid waste was to, first of all, reduce the amount of municipal solid waste.

I also explained to Representative Acciavatti the problems with the current environmental assessment process. Previous governments—certainly the government previous to this—attempted to tinker with the environmental assessment process. As a result of that tinkering, we now have a process that leads to between 8 and 10 years to site a landfill. We were able to discuss that that is not a way to meet the needs of municipalities in the province.

I also explained to the representative that in Ontario it is the municipalities' responsibility to manage their solid waste, that the province has a responsibility to provide effective tools so they can in fact do that. Up until now, that really has not been the case. Many municipalities, rather than look to manage their solid waste issues in

their own communities—because it can take them from 8 to 12 years and hundreds of thousands of dollars, even millions of dollars to site a landfill in the province—they will look to perhaps an easier, less expensive route, which can be sending it to other jurisdictions.

So we believe that the first step, in terms of providing municipalities with what they need to better manage their municipal solid waste in their own communities, is an environmental assessment tool that is more efficient.

Mr Miller: I know Mr Barrett would like to—

The Chair: I'm going to go to the other side, and I'll come back to Mr Barrett. We're going to have to be quick to stay on schedule. Mr Wilkinson.

Mr Wilkinson: I just had a quick question: As you've mentioned, Minister, waste disposal is a municipal issue. The province is setting a target about the need to divert that waste. Could you comment on the relationship that you're trying to build with the municipalities? How are we working together, and how do you find that relationship?

Hon Mrs Dombrowsky: Again, the province has set a goal. We believe that by setting a goal, we have also created a climate for both the municipal sector and the private sector to look to invest in alternatives and options that will assist us in getting to that goal. For example, I know that there are private sector businesses that are now very prepared to work with municipalities to assist them to develop composting initiatives, green bin initiatives. There are some very good examples, even in the greater Toronto area right now.

When the government sets these very real targets, it's not a matter of "We'd like you to do this, we hope you do this." This is our goal.

The feedback we have received from both municipalities and those industries that would be interested in assisting municipalities manage their solid waste is that they're very delighted there is a commitment, that there has been the leadership on the part of the government to say, "This is what the goal must be." I sometimes hear from folks that it's not achievable, and I can only offer that there are communities in Ontario that are achieving over 60% right now. The city of Edmonton, actually, I believe diverts 70% of its municipal solid waste from landfills. There are other provinces that enjoy a much higher diversion rate than Ontario.

So we believe by setting this goal we are demonstrating leadership. I'm very proud of that, and we believe it is achievable and that on a go-forward basis it will assist greatly as municipalities look to site landfills. It will enable them to site a landfill that will serve their needs for a longer period of time when they're able to reduce the amount of waste that they're actually directing to it.

Mr Wilkinson: No goal has ever been met that hasn't first been set.

Mr Barrett: Thank you, Minister, for testifying before the committee. You have met with representative Dan Acciavatti, who gave some compelling testimony—quite appropriate as we look out on the Detroit skyline

from this committee room. I appreciate the representative staying for the remainder of the hearings.

Representative Acciavatti sponsored, as you may know, a House resolution, which was number 261, to urge the Ontario Minister of the Environment to establish new landfills and landfill expansions. I know the representative used "rigorous, must site" language that was used in the state legislation. So this bill, I guess, is going to the House.

Another bill, a House bill sponsored by the representative, Bill 5234, has been signed into law, as you may know, by the governor, Jennifer Granholm; again, to reduce the influx of Canadian or out-of-state trash by prohibiting landfills in Michigan accepting waste unless it meets state standards. That piece of legislation is made up of something like 11 different bills from different representatives and Michigan state senators.

The one question I have, and perhaps ministry staff could help us as well, is the Senate Bill 498, sponsored by Senator Patty Birkholz, Saugatuck township, expands prohibited products in landfills to include beverage containers, as Norm was mentioning, whole tires, oil, lead acid batteries, low-level radioactive waste and hazardous waste. These are all items that are prohibited by the state of Michigan and, I would assume, prohibited by the province of Ontario. Do we have any idea if there is a problem with any of these kinds of products being shipped out of Durham or York or Peel or Toronto?

Hon Mrs Dombrowsky: What I can say to you is that with respect to recycling programs for used oil and for tires, I am awaiting in the very near future a plan from Waste Diversion Ontario on how Ontario can better manage these materials that can be recycled.

I have met with the mayor of the city of Toronto, who has assured me that they have an excellent sorting process at the city, and they remain confident that they will be able to meet the very reasonable standards that have been set by the state of Michigan.

1550

Mr Barrett: I would assume there'd be a similar structure for Peel and York and Durham. With respect to oil—and I know this has been a bit of an ongoing problem—I'm aware of one process in the steel industry. I think we're using the basic oxygen furnace, where oil can be used in that process. It's not burning it, it's a reduction process, which incorporates it chemically. I think there would be some merit in that particular process.

During the testimony—

The Chair: Mr Barrett, can you wrap up?

Mr Barrett: The plane is leaving pretty soon, is it?

The Chair: If you could just wrap up. Summarize your question, please.

Mr Barrett: The other issue that did come up is yard waste. It's important, I think, to find out. Certainly, in other municipalities at this time of year, I see the bundles of pruning, the branches and things that go in, and whether they're recycled—I doubt that they're burned. I'm not sure where they go and what the situation would

be in Durham or Peel, but we have a very serious concern, certainly in this area.

I had a chance to tour Windsor today. They have a problem down here, as you know, with the emerald ash borer. We sure don't want that one heading our way. By the same token, one of the Legislatures is concerned about the Asian long-horned beetle, as you know, which is present in part of Toronto, and the concern that someone has thrown some bark or some branches into the garbage and transferred it across the border. Again, what they've gone through in the Detroit area with that one pest, and their concern with respect to exotic species—both Ontario and Michigan were fighting the same battle on exotic species, whether it's in the Detroit River or in Lake Erie.

It's something that I think we really have to be vigilant on, because if there's anything that could shut down that border overnight—and then we saw the border get shut down a year ago today, I think it was, with the BSE crisis. I watched the trucks line up, going in to Sarnia during 9/11. I happened to be on the 401 and watched that line-up of trucks. It was probably 10 miles, maybe longer.

So I just feel it's very important that we remain vigilant. I think the communication between Ontario and the state of Michigan is very important, and there's a great deal we can learn from these several resolutions and bills that are coming forward.

Hon Mrs Dombrowsky: May I make just a couple of comments? I believe that Mr Barrett has raised some important issues. My husband used to work for the Ministry of Natural Resources and, some years ago, he was involved in the gypsy moth program. Again, that was another pest. The thing about pests is that they seem to be able to get across borders; they don't need a truck to take them.

Certainly with that problem, it was all over the north-eastern seaboard of North America, in Ontario, as well as in the northeastern states. I offer that just to suggest that if there is an infestation, we would need to be careful not to simply suggest that it might have happened because the insect may have travelled in a vehicle. It's an open border. It's the largest unprotected border in the world.

Having said that, I think municipalities do have a responsibility to ensure that the waste product they would be shipping out, number one, meets the standards of the jurisdiction to which it is being shipped. When I spoke with the representatives from the state of Michigan, I was certainly given to understand that any shipment deemed not to meet the standard would be turned around. Obviously, municipalities in Ontario have a vested interest in ensuring that the product they are shipping south meets the standard. I think that is very important. There is no question that it's an issue to be aware of.

Your last point was with regard to the relations between Ontario and the state of Michigan. I was very happy to meet with three representatives from the state of Michigan. Did you tell me that was the first time that had happened?

Interjection.

Hon Mrs Dombrowsky: It was the first time that had happened, that a Minister of the Environment from Ontario had actually met with them. I'm glad that Representative Acciavatti is still here to confirm that.

At the time of our meeting, I was able to commit to them that I thought it was so beneficial that it was something we should do on a rather regular basis, and would intend to do that, because I think we do have a great deal to learn from them. I'm very eager to continue to share with them as we develop our environmental assessment process and other environmental issues. They are particularly interested in a number of our environmental initiatives. I do look forward to continuing a very good and healthy relationship with the representatives from the state of Michigan.

The Chair: Thank you, Minister Dombrowsky, for your delegation today. We appreciate your taking the time to appear before the standing committee on the Legislative Assembly and appreciate your answering questions for us this afternoon.

This committee stands adjourned until tomorrow morning at 9:20, when we'll be at the Ramada Inn conference centre in Milton.

The committee adjourned at 1555.

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Standing committee on the Legislative Assembly

Adams Mine Lake Act, 2004

Comité permanent de l'Assemblée législative

Loi de 2004
sur le lac de la mine Adams



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STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Friday 21 May 2004

Vendredi 21 mai 2004

The committee met at 0920 in the Ramada Inn, Milton.

ADAMS MINE LAKE ACT, 2004

LOI DE 2004

SUR LE LAC DE LA MINE ADAMS

Consideration of Bill 49, An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes / Projet de loi 49, Loi visant à empêcher l'élimination de déchets à la mine Adams et à modifier la Loi sur la protection de l'environnement en ce qui concerne l'élimination de déchets dans des lacs.

The Chair (Ms Linda Jeffrey): Good morning. My name is Linda Jeffrey. I'm the Chair of the standing committee on the Legislative Assembly. Thank you for coming. I'd like to welcome our guests this morning. This is the second day of hearings on Bill 49, An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes.

We have a number of delegations. We have a very full day ahead of us. I would just like to remind all our guests and members that we have determined that individuals will have approximately 10 minutes to speak and groups will have 20 minutes.

There are a few changes to our agenda this morning. With agreement from the participants, the delegation that would appear at 9:20, Dr Boyd Upper from Clear the Air Coalition, is trading places with our 10 o'clock delegation, which is Joshua Creek Ratepayers Inc, Rob Burton, president, but they will still be speaking this morning.

Yesterday there was a request for standing committee members to have a copy of the minister's statement. That will be faxed to us this morning for distribution to the members.

JOSHUA CREEK RATEPAYERS INC

The Chair: We'll begin with Mr Rob Burton, from Joshua Creek Ratepayers Inc. Would you do me a favour and introduce yourself and the group you speak for, for Hansard, please? You have 20 minutes.

Mr Rob Burton: Thank you for the opportunity to share with you today my thoughts on Bill 49 on behalf of my residents' association. Our residents' association has

not always so readily been given a hearing for our views, so we appreciate this very much.

I am the current president of the group. This is my third term. I've been active in the group since I moved to Oakville from Toronto 10 years ago. I'm a retired film and television executive. Some of you may have some note of me. I was the founder of the popular YTV television network.

I have a lot of respect for you who have made the commitment to serve in the Legislature. I've always worked as a private person on political campaigns as a volunteer, with signs and canvassing. I have another perspective on the process in which you are involved. The grassroots view that I just described is very important to me, but I've also seen legislators from the perspective of covering them as a journalist.

Before YTV was ever an idea in my mind, I was a journalist covering Parliament for CTV and CBC. I helped start Marketplace. My wife and I were co-founders, with a group of journalism friends from across the country, of the Centre for Investigative Journalism. I tell you this because I think you might like to know that I approach you and the matter of Bill 49 with a sense of perspective and some understanding of the process you are a part of.

Joshua Creek Ratepayers Inc, which is popularly known as JCRI, serves the southeast corner of Oakville. It's a forum for discussing and voicing the concerns and interests of this 180-year-old area. JCRI itself also has a well-built-up sense of perspective.

In 1822, five years before William Chisholm founded Oakville, another Canadian pioneer, Joshua Leach, bought what is JCRI's entire 200-acre area and settled his family there. The original home, millpond and dam are in the heart of the area.

In 1962, this area and the rest of Trafalgar township became part of Oakville and began to grow rapidly. Today, approximately 7,000 people live in a relatively stable community of 2,250 homes in the Joshua Creek area, and we share our space with a sewage treatment plant, one public school and a small shopping plaza. On two sides, we are surrounded by heavy industry, and on the west, we are neighbours with old Oakville.

For going on 30 years, JCRI has been a dedicated voice in public affairs for the community, and ours is as representative an area of middle-class homes as you could find anywhere. We are not the part of Oakville

where the mansions are. We are the buffer between that part of Oakville and the heavy industrial area of south Mississauga. My friends and neighbours in JCRI are salesmen, firemen, lawyers, ad account executives, engineers, policemen and policewomen, teachers, mechanics, radio DJs, retirees, empty nesters and young families.

JCRI, in its 30 years of activity, has had to take action to protect and improve the environment by being actively involved in environmental protection cases. These have involved St Lawrence Cement, as well as Petro-Canada, Sithe Energy and Ashland Chemical, which moved to this area after its plant on Castlefield Avenue in Toronto blew up in 1975.

Today, our board of directors includes members active in those past events, and we're justifiably proud of our built-up expertise and reputation in matters of environmental protection, as well as in other areas of public affairs. We have a corporate memory, if you will, of 30 years of work to protect and improve the environment. If you noticed that last week's first smog alert of the year came six weeks earlier than last year's, and if you noticed that Oakville had the worst reported smog in the province, you can see why we think the environment is an urgent matter and why we feel there's much work left to be done.

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When I think of the calibre and accomplishments of my friends and neighbours, I always feel grateful to live in a community so blessed with skill, experience and interest in public affairs and the environment. So I hope you'll not be surprised that we are interested in and strongly support Bill 49, among other initiatives by this new provincial government. JCRI supports Bill 49. JCRI welcomes the government's recognition and use of its inherent powers to protect the environment and the public. Previous governments have not been so astute or so responsible, in our experience.

As I mentioned earlier, JCRI's area borders the city of Mississauga. We have followed with dismay the way previous provincial governments frustrated and prevented our friends and neighbours in Mississauga from identifying and preparing suitable landfill facilities over the last 10 years, as its landfill capacity was used up by its rapid growth.

As a result, today, our neighbours in Mississauga are sending their garbage on trucks to Michigan too—it's not just Toronto—and they're subject to the same uncertainty that Toronto faces, but it's not out of any preference by our friends and neighbours in Mississauga. They feel they were forced into this uncertain, and therefore unsatisfactory and expensive, solution to their waste management problem.

With the example next door of how Mississauga ran out of waste management facilities, we tend to believe that Toronto didn't get into the fix it's now in on its own either. We assume Toronto council's vote against the Adams mine indicates that their continuing desire is the same as ours and of our friends next door.

JCRI believes we all want to be environmentally responsible. We all want to deal responsibly with our waste. We all recognize that this means we need to control growth better for a change. I think we all know that we need to plan growth more comprehensively for a change. We all realize, we hope, that we must link population growth plans to well-tested waste management planning to accommodate growth. We believe we can and must achieve the diversion rates being mandated by Minister of the Environment Leona Dombrowsky.

JCRI welcomes Bill 49 because we take it as evidence that this government understands the quality-of-life issues that brought it to power. Both JCRI's riding and the riding next door to us in Mississauga switched their support from the previous government to the new government in the last provincial election primarily because of these concerns. These were the dominant issues in the elections in those two ridings.

We could see the costs of growth being shifted to existing residents in the form of unsustainable increases to our property taxes and rates. We could see other costs of growth being shifted to a future, more expensive reckoning by being evaded and ignored in the present. We could see the environment being the first sacrifice in almost every decision.

We're happy to see Bill 49, and we see it as a sign that this government will end the failure to adequately plan for the consequences of growth that have been systemic up to now and to require satisfactory waste management plans as part of any plan for urban growth. So how could JCRI not support Bill 49?

Bill 49 prohibits using Adams mine or any other lake in Ontario as a landfill site. Anyone with an ounce of environmental common sense, we like to think, knows that would be a deadly way to deal with garbage.

Some people have chosen to try to tie Adams mine to the Halton landfill site. All Bill 49 does is remove Adams mine as a landfill destination for Toronto garbage. Toronto would fill Halton's landfill in two years—a blink of an eye. That would be no solution at all. It would only add Halton to the list of communities with a garbage problem.

JCRI is very grateful to the committee for choosing Halton as one of the locations for its hearings on Bill 49. It gives us an opportunity to spotlight our community's success in providing adequate—for now—waste management facilities. It gives us an opportunity to express our strong desire to work with the government on its promised initiatives in planning and managing urban growth better for a change.

We are proud of the way our community has achieved sustainability—for now—in its waste disposal. Our sustainability cost us more than \$100 million and more than 10 years of work. Today, our sustainability in waste management is under great pressure from a huge population increase being adopted through the planning process, as we speak, in Milton and north Oakville. For all the stress falling on our waste management plan, our community should be an example to others for our prudent

creation of our present waste management site. In this, we think Halton should be emulated. We don't want to be taken advantage of by others who need to be allowed to develop their own solutions.

JCRI also applauds what appears to be this government's respect for the environment, which reflects the importance our community has always placed on the environment. As an example of our concern, there are two environmentally significant areas in our community, both under such severe stress from the negative impacts of poorly managed urban growth that they are being delisted as ESAs. Our town and regional official plans express a commitment to protect, preserve and enhance environmental features, but our locally elected officials appear to be choosing to eradicate them rather than remediate them. So we may need your help before this is over.

Whether by inattention, expediency or indifference, governments in the past have too often chosen to sacrifice environmental quality in the name of balancing what are dubious goals at best. We therefore believe very strongly that filling lakes with garbage is a perfect example of how not to deal with the problem of waste management.

As a college student, I was part of the group that created the first Earth Day in 1970. It is amazing to me that in the year 2004 we are still unable to take for granted that all our government officials will place the environment first in the execution of their responsibilities.

This new provincial government has gotten off to a good start in environmental matters with Bill 49 and other initiatives we support, such as the greenbelt study. I hope this government represents a turning point for the environment in Ontario.

JCRI believes that no one should be able to approve or proceed with growth plans that don't include adequate waste management plans for all the waste reasonably to be expected from such growth, and no one should be able to off-load on to the environment or his neighbours those responsibilities with regard to growth and waste management. Bill 49 is an essential step toward putting this vitally important policy concept into practice.

Please, we hope you'll keep us informed as to how we at JCRI can be of any assistance in this work. My town's member of the Legislature is Oakville's Kevin Flynn. He said in the second reading debate speech he gave last month for Bill 27 on the greenbelt that the province owns more than 1,100 acres of prime greenbelt-type land in Oakville. We hope he and the government will take the necessary steps to keep that land in public ownership and not sell it off to developers as the previous government intended. We support and endorse a proposal that this land be turned over to Conservation Halton, a proven and respected steward of lands entrusted to it. That land is a reminder that protecting open green space and the environment is and has always been so mainstream a concept in Ontario that it's been done before, by the Bill Davis government in the 1970s. They called it the

parkway belt, but too much of it is gone now. The last government exempted, removed and sold parkway belt land as well as many another public asset that wasn't nailed down. For a long time, the province has had these wonderful words in its planning and development policies, "to protect, preserve and enhance." The previous government didn't always live up to those words when their developer pals came calling.

From a citizen's perspective, too often in the past urban planning has seemed anything but something we could recognize as planning because it ignored too many consequences and inflicted too much damage on our quality of life. Bill 49 is a major step forward, in our view, when viewed in that context. Too often, it seems to us that planners are working for the bad guys and are just trying to rationalize bad ideas and evade costs and responsibilities. I want to explain how that works.

Imagine that a planner dies and goes to hell. When he gets there, he doesn't care for the way he finds Satan has let the place spread out. He persuades Satan he can grow the place faster if he brings in developers and learns to pack the bodies in more tightly by building smaller homes and cutting down on such frills as wide streets, good roads and adequate parking and zoning that keep homes away from industries. He teaches Satan to start calling this "live-work" so he can make the sinners think they're getting something new and different that can't be judged by any previous expectations. He tells Satan to just spread the sewage on the fields and dump the garbage in the lake of molten fire because it will take a long time for all that garbage to cool the fires of hell and the fumes will help punish the residents of hell for their sins. Satan is delighted with his new diabolical planning. He rewards the planner with higher pay and some junior demons to boss around. Satan lets the developers build themselves giant estates with huge homes, far from the new high-density developments they build so they don't have to see or hear the moans of the condemned and the disappointed. One day, God calls Satan to mock him. "How's it going in hell, Satan?" he asks. "Hey, things are great," Satan says. "We've got sinners stacked up on top of each other now. My sin taxes are only going up. All my demons are on higher pay. They've all got bigger offices and they're sucking back more perks. And my sinners are more dazed and confused than ever." God says, "What? You've got a planner? That wasn't supposed to happen. Send him up here." Satan says, "No way. I like having a planner. I'm going to keep him." "Send him back up or I'll sue," God thunders. "Yeah, right," Satan says, "and just where are you going to find a lawyer?"

We hope that if the province will have better rules and standards for urban planning, we might all be a little less bedevilled by what passes for planning in our province and enjoy a higher quality of life, the way Municipal Affairs and Housing Minister John Gerretsen promised in his April 2 speech in the Legislature on second reading of Bill 27; who knows, maybe even get some of the lawyers out of the planning business.

We're talking about a non-renewable resource here, a resource called the quality of life of Ontario. It's clear from their remarks in the Legislature that this government, on the occasion of Bill 27's second reading, understands this fact and is acting on it. This is what Municipal Affairs Minister John Gerretsen said, "Ontarians need green space, because it improves their quality of life, and a high quality of life is what we were elected to deliver."

We say amen to that, and we say bravo to Bill 49 as an essential part of that vision. I thank you for any consideration of these remarks.

The Chair: Thank you, Mr Burton. I don't have any speakers that have indicated—thank you very much for a very entertaining delegation.

Mr Burton: I wanted to get you off to a good start.

The Chair: You did.

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NOTRE DEVELOPMENT CORP

The Chair: Our next speaker is Mr Gordon McGuinty. He has given us a handout. Everybody should have one in front of them. Good morning, Mr McGuinty. I've read the beginning of your delegation, and I understand you would like some latitude. I will try and provide that latitude, as we've had a cancellation this morning. I do have to stay on schedule, but I will endeavour to make sure that people are able to ask you questions as we go through your delegation. For Hansard, if you would introduce yourself and the group that you speak for.

Mr Gordon McGuinty: Thank you, Madam Chair. I'm speaking today as the president of Notre Development Corp, which owned the Adams mine site for about 13 years. I'm also the managing director of Adams Mine Rail Haul, the company that is now the owner of the site. The majority of my comments, you will see, reflect the ownership period of Notre Development Corp.

I'd like to thank you for the opportunity to attend. As the Chair kindly said, my time period—we spent 16 years on this project, so I suggested 16 minutes might be relevant. As I've attempted to do on every one of the over 500 public presentations I've made in Ontario since 1990 on the Adams mine and waste management issues, it's my intent to be factual and constructive. I also trust my remarks may be cause for all members of this committee and, in fact, all political parties in Ontario to reflect on how this legislation will impact on the future of waste management in Ontario. I'll provide the committee comments on the Adams Mine Lake Act, 2004, plus take the opportunity to thank the many thousands of people who have recognized the need and supported the development of new landfill capacity in Ontario at the Adams mine.

First, let me be clear: I am under no illusion that this presentation will have any impact on the passage of Bill 49. This government, for political reasons, has determined that the Adams mine landfill will not be developed under any circumstances.

Since 1989, I've had the opportunity to watch five separate provincial administrations in their attempts to deal with the waste management crisis in Ontario. Interestingly, only the Liberal government of David Peterson understood the need for the province to work with the city of Toronto and the GTA regions to develop long-term solutions. It was the Liberal government of David Peterson, supported by David Ramsay, the MPP for Timiskaming, that was prepared to develop the Adams mine landfill, the only option in Ontario with a willing host community in 1989 and, by the way, still the only site with a willing host in 2004.

Since then we've seen the NDP government of Bob Rae spend \$89 million on an ill-advised attempt to site mega-landfills within the GTA and then the Harris-Eves government for eight years refuse to recognize the impending disposal crisis and attempt to download the responsibility to municipalities and the city of Toronto. It was this policy, or lack of policy, on waste management disposal issues that has resulted in our current crisis.

The reality is that the province is a regulator and makes the ultimate decisions on where and when landfills are developed in Ontario. The Conservative government turned a blind eye to the issue. It was too controversial for them. This current government is following the same path in stating that disposal remains a municipal responsibility. However, the magnitude of the problem has become so great due to the Michigan situation that it will be the McGuinty government that will be forced to solve the problem during its term of office.

I'll not dwell on the issue, only to say that Ontario remains without any coherent policy to ensure adequate landfill capacity is developed for its citizens. Ontario is now shipping 3.5 million tonnes of garbage to Michigan annually, and we have no available licensed capacity to dispose of this tonnage. The magnitude of the crisis grows annually. An independent study released in 2003 by Gartner Lee Ltd, which was not contradicted by the Ministry of Environment, states that over the next 25 years, Ontario will need an additional 112 million tonnes of new landfill capacity to meet the waste generation of its residents and new population increases. Even factoring in aggressive recycling and 60% diversion, the problem will not be solved. We have a crisis. New landfill capacity is required today, not tomorrow.

In light of this crisis, the McGuinty government solution is to pass Bill 49, eliminating an option for Ontario disposal that has passed all regulatory requirements and has been issued a valid certificate of approval, an approval that took over five years and millions of dollars to obtain.

A few brief facts on the Adams mine: The Adams mine is not a lake; it's a large open pit that's been closed for years. This "picturesque lake," as it has been referred to by the so-called environmental lobby, looks more like a moonscape. It has a five-metre rock berm around it and, if you get too close, you could fall 300 feet and kill yourself. No cottages or recreational activities will ever be built or take place at the Adams mine lake. The

government has provided no environmental justification for this legislation. The issue of any impact on a lake is pure fabrication.

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The Adams mine landfill is not an environmental issue for thousands of people in the Kirkland Lake area who have taken the time over the past 14 years to become involved in the approval process and become informed environmentally. The town of Kirkland Lake has had five referendums since 1990 in the form of municipal elections. Five consecutive councils have supported this project. The same applies to the neighbouring municipalities of Larder Lake and Englehart.

The opposition is not Kirkland Lake-based and never has been. It's based in New Liskeard, approximately 100 kilometres away. If we put this in context, it would be like the city of Barrie residents telling Toronto not to operate the Keele Valley landfill or the city of Guelph telling London how to dispose of its garbage.

Finally, in 16 years, there has never been a technical document put forth that disproves the fact the Adams mine is safe. The government had the option to send the Adams mine back to a hearing for further review. They knew the site would again be proven safe. In fact, since 1989, the greater the environmental due diligence this site has received, the safer it has been proven to be. The environment is not an issue.

The reality is that politics has won out over the environment. The safest landfill site in Ontario will not be developed. I have no hesitation in saying to this committee and this government that your toughest days are ahead of you. You will still have to approve new landfills to solve our disposal crisis, none of which will be as safe as the Adams mine. Moreover, a dangerous precedent has been set that environmental opposition groups will use for years to come: specifically, that political pressure from a small group can and will kill environmentally sound projects.

I want to comment on Bill 49 specifically and then we'll conclude with some final remarks. The legislation is historic in that it directly targets two companies, Notre Development Corp and our numbered company that now owns the site. It revokes a valid certificate of approval obtained under the laws and regulations of Ontario, yet gives no specific reason for the action. The challenge this government or any government that follows will have is, why should any company invest the time and money to develop new landfill capacity in Ontario when politics and politics alone can result in a certificate of approval being revoked without full compensation or damages paid? This will be the challenge this government must address in the months ahead, and I wish them luck. The risk factors for doing business in Ontario, especially for those businesses that must rely on government-issued permits, has just increased dramatically.

Unfortunately, this bill should be called the David Ramsay I will quit act, 2004. In my view, this bill was passed because a minister of the crown threatened the Premier that he would resign if the Adams mine was not

stopped. In my view, David Ramsay won, but the result is that the environment of Ontario lost.

On the issue of keeping promises, the Premier made only a commitment during the election, which I thought personally was a sound commitment, to make sure that the Adams mine had received a full and fair environmental assessment. There was no promise to completely eliminate the site from consideration to help solve Ontario's disposal crisis. Again, in my view, politics won and the environment lost.

On the issue of compensation for Notre Development and our numbered company: The bill provides that we can file for expenses for the last 16 years' work only. Let me assure the committee: It will be impossible, by paying expenses, to properly compensate our company, our employees, our investors, advisers and partners who have spent the time, effort and money to make this project a reality.

The minister has stated that the government will be fair. The government formula is not fair. On one hand, the bill allows us to submit expenses, but then proposes to reduce the expenses by the amounts reimbursed to us by any person. All of our expenses incurred relevant to the Adams mine should be paid by the government. We will deal with and be responsible for any third party directly. The government should not try to micromanage our business, nor the settlement of our affairs, all of which were caused by the introduction of this bill and the ultimate passage of the act.

We'll forward to the committee a proposed amendment that will attempt to clarify and address these inequities. I trust that amendment would be reviewed fairly.

My simple message is this: Again, the minister stated the government intends to be fair. The government, through Bill 49, has eliminated our ability to develop and operate a valid business in waste management in Ontario—a business that is desperately needed to ensure Ontario does not have to rely on Michigan disposal; a business that would provide competitive balance in the waste industry in Ontario today. It has removed, by legislation, our ability to sue or commence legal action for damages or lost income, when it is clearly evident that the business was both needed and could be profitable.

Therefore, the minimum the government should do is to now pay these sums spent on the project and stay out of our business as we try to salvage what we can from the compensation received. The project was a private sector development; it'll be our responsibility to reimburse or compensate other third parties who may have been involved and who may be entitled.

Madam Chair, my final comments after 16 years' work: I want to thank the people of Ontario, who have had the courage and conviction, since 1989, to put the environment above politics and work to solve the disposal issue; specifically the mayors and councils of Kirkland Lake, Larder Lake and Englehart, represented over the years by individuals like Joe Mavrinac, Bettyann Thib Jelly, Bill Enouy and Joanne Thompson; also Joan King of Metro Toronto and Hazel McCallion of Missis-

sauga. These are politicians who have had the courage to confront the issues and the integrity to put the best environmental options first. Unfortunately, there has been no provincial government since David Peterson in 1990 that would support both their knowledge and their vision.

I want to thank the thousands of people who supported the Adams mine in Kirkland Lake and throughout Ontario—individuals from all walks of life who attended open meetings, made deputations, listened to presentations, wrote letters and cared about their communities and the environment.

I want to thank the hundreds of technical engineers and scientists who worked on this project over the past decade to prove this site was safe. I attach a couple of letters illustrating their credentials.

I also want to thank the staff at the Ministry of the Environment. The MOE staff vested with protecting the environment in Ontario did an outstanding job making sure the Adams mine was not only safe, but had the most restrictive certificate of approval ever issued for a landfill in Ontario. The MOE issued the certificate, and it is not being revoked for any environmental reasons, only for political reasons.

I ask what message this sends to the people in the ministry who are vested with protecting the environment. The ministry staff must be asking if their efforts really matter; if, after stating and testifying that the Adams mine could be operated safely, politics has overruled their professional recommendations.

My final comments and, if possible, a bit of advice to all members, notwithstanding their party persuasions: The continual tinkering with the EA Act will serve no useful purpose. The minister intends to reopen the approval process. My view is that this is unwarranted. The existing approval process for landfills in Ontario is the most onerous in North America. The government has all the necessary powers to ensure sites are approved or rejected.

Notwithstanding the cries from environmental activists, Ontario has the most extensive public consultation requirements of any jurisdiction in North America. Everybody has the right to be heard, and you will never be able to make changes that will satisfy specific special-interest groups opposed to individual projects. If a proposed site is safe, we have a competent Ministry of Environment that can make sure the necessary due diligence is done by any proponent. The system works as it is. Further tinkering will equal further delays and a greater disposal crisis.

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Notre Development showed that a site can be approved under the current process. In fact, our site was approved under the EA process in place prior to the legislative changes made by the Conservative government, and came into effect in 1996.

If there is one thing I will take away from these 16 years, it's the fact that we followed Ontario's stringent approval process. There were no shortcuts. There was no political assistance or interference. We delivered an

approved landfill site that could have been developed and used for the betterment of Ontario.

In conclusion, as I stated at the beginning of my presentation, I trust my comments today will be taken in the spirit they're intended: to be factual and constructive. I am not here to make any political statements, just to lay out the facts, because, with the passage of this legislation, our day is done.

However, I will suggest with all due respect that the future will prove that the challenges this government will face in finding new landfill capacity in Ontario as a result of this legislation will be greater than if the Adams mine had been allowed to be developed.

On that note, I thank you for your attention and ask you if you would seriously consider the amendment we will forward. I'd be pleased to answer any questions.

Mr Toby Barrett (Haldimand-Norfolk-Brant): Thank you, Mr McGuinty, and thank you for the written brief.

Our previous speaker, Mr Burton from Oakville, said that Ontario is looking at a future of more expensive reckoning. Your waste management business, as you indicate, is desperately needed to ensure Ontario does not rely on Michigan disposal in a business that would provide competitive balance in the waste management industry in Ontario. As you've indicated, the passage of this bill effectively eliminates your companies—Notre or Adams Mine Rail Haul—from the competition, so to speak. You previously did bid on Toronto garbage. The other party was a successful bidder with the Michigan approach. Part of my question relates to competition or future lack of competition. After 16 years, what group in North America would take a look at the province of Ontario, having seen what your organizations have gone through?

Mr McGuinty: I'll try to make this very simple. In the United States approximately 85% of the garbage is managed by the private sector; municipalities manage about 20%. In Ontario, it's the reverse. Historically, about 80% of the garbage has been handled by municipal landfills and the private sector has basically looked after private sector waste etc. In the 16 years I've been around, the regulatory process to get a landfill approved in Ontario is so onerous compared to licensing a landfill in Michigan that companies—Ontario-owned or Canadian-owned or American-owned—have not bothered moving ahead to license landfill capacity in Ontario. So when the Keele Valley landfill closed, there was no available capacity to replace that, either municipally owned or on a private sector basis. In Ontario the only competition that has been provided in the last five or six years was Michigan and the Adams mine. On the last two major tenders, both in 1996 and 1999, for the city of Toronto, if it hadn't been for the Adams mine putting a tender on the table, the price would have been escalated substantially into, I'd say, the \$65-a-tonne range, because the only option bidding was Michigan. In fact, in 1996 our number was about \$56 a tonne and we didn't have our environmental assessment finished, so we couldn't be

awarded the contract. When the tender went down in 1999-2000, we actually drove that price down to \$53 a tonne and the American companies had to follow.

What's happening by taking the Adams mine out of the marketplace is that you will not have that market correction. You'll now be in a situation where there's basically one company in Ontario that's American-owned that has two major landfill expansions moving forward, which I suggest to you they're going to get faster than before, because the Adams mine isn't on the table any more. What's going to happen on the business side, to try to answer your question, is that the prices for everybody in Ontario—every business, every homeowner—are going to escalate because we have no competitive balance out there.

Mr Barrett: With this legislation, the province of Ontario is now playing a much larger role in landfill and in decisions with respect to waste management. Again, it's hard to predict the future, and I just have a few quick comments or questions. Is there any future or viability for rail haul in Ontario to other sites? Is there any future in other abandoned iron ore mines, or are we looking at the province now making decisions to landfill on farmland, for example, in southern Ontario?

Mr McGuinty: My quick answer—and I apologize that my presentation today is to try to be very balanced—as you might have mentioned, I suggested that the previous government in power has created the environment of where we are today. I'm sorry I have to say that.

In specific answer to your two questions, we've examined every site in Ontario and the eastern US seaboard where rail haul could be used. The advantage of rail haul is that it can go from A to B with a unit train, and we were able to do that at the Adams mine. If you're into having to build spurs and things, the cost of the development escalates substantially. Certainly there are no sites we know of in southern Ontario that could be rail-haul-served unless the rail infrastructure is built, which could be done but would drive the cost up. Just a comment on the lake issue: As I said before, I suggest that the government, in their wisdom, should seriously look at this because there are a number of open pits, abandoned mines, that could be served for utilization of waste management.

If I may digress slightly, and I'll do this quickly: If you visited the Adams mine, you would see that what we're doing there is taking a resource that for 26 years shipped iron ore to Hamilton, and we're going to reuse that resource. The Adams mine looks like a bomb hit it. We're going to take that—or could have taken that and reused that to the benefit of Ontario, utilizing rail haul.

The way this bill is, and to your question on the use of lakes, my concern is—and I think the Aggregate Producers' Association of Ontario is worried about this, everybody—that this is so restrictive that it's going to have implications down the road on being able to help solve the problems. So you're taking the ability, really, of abandoned mines, abandoned pits, abandoned quarries, which can be made safer, in my view, and can be proven

to be safer than greenfield sites, out of the equation. So if you're a place in Ontario right now where this province and this government are going to have to have approved landfills—I'm sure they realize that themselves—you've taken one area or one option off the table. So anybody who's got a couple of hundred acres of farmland had better start worrying, because that's where the garbage has got to go.

Mr Michael Prue (Beaches-East York): Contrary to what has been the mythology, the public often thinks that Toronto city council turned down your proposal. In fact, they did not. They supported your proposal. The previous speaker said that too; they supported your proposal. I was on council; I did not. I was one of the minority. You, in fact, backed away from the proposal because there was an addendum or an addition to Toronto's acceptance that you had to assume the full environmental responsibility, which you and your company declined to do. Why did you do so, in view of the fact that you say you trust all of your experts that there was no environmental problem? You should have just said OK and done it. That's what I have never, ever understood.

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Mr McGuinty: I really appreciate that question, Mr Prue. The reality is that we negotiated, were the low bidder by, about \$20 million, ranked number one environmentally by a substantial amount, as our member here said. So what happened was, we were awarded the contract. There should have been a ratification of that contract, but again, with all due respect to then-Councillor Layton, he organized a protest against that. He turned democracy into a joke in terms of shutting that council chamber down and putting pressure on Mayor Lastman and whatever.

The clause you're referring to was a simple little clause in there that said, "In the event that over this 20-year contract there is a financial dispute that results from this government's or the federal government's passing legislation that would impact on the contract, then we could go to arbitration." There was absolutely nothing in that clause relevant to environmental liability. We were prepared to sign that contract. We would have signed it in a heartbeat. The issue was that they wanted us to withdraw that clause about the issue of a legislative change. That was a struggle for us to do at the time.

I'm sorry; I'm going to somewhere else here. The other thing that let that down is that there is no responsibility on the municipality if we contract their garbage. It's solely our responsibility under the environmental assessment laws of Ontario. So it was a sham, what Councillor Layton was trying to put off, and he got it done and the council acquiesced.

But we should have had some help from the Minister of the Environment of Ontario to clarify that there is no liability for the city of Toronto. We didn't get that help. There was no clarification from the government in power at the time and the whole thing blew up. It was a debacle. In essence, we were quite prepared to sign the contract. It has nothing to do with environmental liability. We

assumed full liability for the environment on that site. It's in the statutes of the Ministry of the Environment of Ontario in the certificate of approval that we assumed. But it got blown—I don't know if I'm answering your question—completely out of proportion and, as a result, politics prevailed and the contract fell apart. It was right in the middle of a municipal election. Our current mayor ran on it and it's just the politics of garbage. I don't know if I clarified that.

Mr Prue: I don't know whether you did either, but thank you for the answer.

Mr Jeff Leal (Peterborough): Thank you, Mr McGuinty. The reason I understand the red flags have been raised in New Liskeard: I've been to New Liskeard once and had an opportunity to look at the dairy farms on the clay belt, and I've been a municipal councillor in Peterborough and spending \$6 million to expand the landfill site there. The leachate escapes and there's always been the concern that that leachate would travel to those farming operations in New Liskeard. Dairy farms use significant quantities of water in their operations and in fact would have the potential of ruining one of the most sophisticated and successful farming areas in northern Ontario. Could I just get your comments on the technical issue of leachate escaping?

Mr McGuinty: Absolutely. First, my comment is that it has been proven it is impossible for leachate to escape off that site to contaminate anybody's ground well, not 50 kilometres away but not 200 metres away. We have proven that categorically. That was in the environmental assessment hearing testimony.

Relevant to the Timiskaming Federation of Agriculture, we made a specific effort to understand their concerns at the outset of our environmental assessment process. The Timiskaming Federation of Agriculture had an independent study done for them by a company called Gartner Lee Ltd when Metro Toronto, by the way, had the option on the site. Metro Toronto—

Mr Prue: I was there too.

Mr McGuinty: Yes—paid for that study. That study came back and said that there is no possibility whatsoever that the operations of the Adams mine can affect the Timiskaming farming community.

Second, during the environmental assessment the Ontario Federation of Agriculture sent a hydrologist up to review and work with our consultants, both our peer review consultants and whatever, and she confirmed to them that it would not happen.

Third, as part of our due diligence, the Timiskaming Federation of Agriculture asked us if we would do an additional study to show that while maybe it won't escape through the bedrock, but what if it surfaces? Would it get in the nearest river, which is about five kilometres away? We did that study too, and it confirmed that there is no possibility. Any allegation that Timiskaming agriculture can be impacted by it is completely false and inaccurate.

Mr Leal: Do I have time for a second question?

The Chair: If you're really quick.

Mr McGuinty: And I'll be really quick on my answer.

Mr Leal: Mr McGuinty, it never ceases to amaze me why everybody keeps looking at landfill in Ontario. How come companies aren't looking at energy from waste? I know successful companies now in upper New York state—I was through Syracuse in March. Americans field modern energy-from-waste facilities, putting energy back into the grid, with sophisticated technology now to reduce emissions. For the life of me, I don't understand why more companies in Ontario are not looking at that or other technologies in that area and moving totally away from landfill, which is a very archaic process, in my view.

1020

Mr McGuinty: A quick answer: First, the reality is that incineration or the burning of garbage has been going backwards as a method of managing waste in North America for about the last six years. There have been some developments, like you say, but no large urban area is moving to use incineration as their major method of doing it. Secondly on that, the cost factor is extremely high. For your capital cost to put in a large incinerator, say to manage a substantial portion of the city of Toronto's garbage, you're looking at about \$500 million.

Companies that want to do that have to have two things. They have to have a guaranteed contract from a city like Toronto that says, "I will feed that plant X number of tonnes a day and annually or I won't build it." That goes counter to what we're trying to do as a society in diverting from waste and goes backwards. So if you want to sign a contract with an incinerator guy, you're going to cap your ability to divert, because he needs the waste.

Secondly, your suggestion that landfill is archaic—maybe 20 years ago. We have this vision about what landfills look like, but you go to a landfill today and this is a highly technical, highly managed, tremendous operation.

I give the city of Toronto a lot of credit. They ran one of the best landfills anywhere you're going to go in North America, and it was located right in the middle of Vaughan. Yes, there are a lot of people growing up there now, but you could go there and ask somebody who was 10 blocks away if they knew where the Keele Valley landfill was and they would have a hard time saying where it is.

You can go to landfills in North America where the golf courses are being developed as the landfill is filled. So the suggestion that landfill is archaic—I don't meant to disagree with you, but landfill has come and is one of the more progressive ways to manage waste. There isn't a landfill of any volume today that doesn't have leachate treatment in it and also doesn't have an energy system in it to capture the landfill gas and turn it into methane.

As an example, the Adams mine landfill, had it been allowed to proceed, in year six would have had a 22-megawatt power plant there that would run for approx-

imately 40 to 45 years. It was in the design; it was in our certificate of approval that we would build it.

I apologize, Madam Chair; I know I wandered on a bit.

The Chair: Thank you, Mr McGuinty, for your delegation. We appreciate that you took the time. I hope you feel you had a fair hearing this morning. Thank you for coming.

CLEAR THE AIR COALITION

The Chair: Our next speaker is Dr Boyd Upper from Clear the Air Coalition.

Good morning. Thank you for being patient and waiting. Would you introduce yourself for Hansard and indicate the group that you are speaking for. You have 20 minutes.

Dr Boyd Upper: Thank you, Madam Chairman and members of the committee. My name is Boyd Upper. I'm chairman of Clear the Air Coalition. I want to thank you all for giving me the opportunity to express my views concerning Bill 49.

First, I'd like to tell you something about Clear the Air Coalition, why I'm here and what has shaped my views about this bill.

Our organization was started in 1999 as a not-for-profit corporation to advance programs that would enhance the environment by bringing together groups of like-minded citizens to support projects that would reduce air and water pollution and protect green spaces.

Our first major project was a community response opposing the location of a proposed 800-megawatt gas-fuelled electricity generating station on the border between Mississauga and Oakville in the midst of a large residential area. This area for years has been identified by the Ministry of the Environment as having a stressed air shed. The reason the air shed is so stressed is that we're downwind of the steel mills in Hamilton, the Petro-Canada refinery in Bronte, the paint plant at Ford Motor Co in Oakville, and we're directly adjacent to the St Lawrence Cement plant, Westroc Industries, the Ashland chemical refinery and the Lakeview Generating Station.

It's well known that children in south Mississauga have one of the highest rates of asthma in Ontario, and the principal reason is ambient air pollution. A few years ago, the Ontario Medical Association published a study that attributed 1,950 premature deaths per year in Ontario to the poor quality of our ambient air. The medical officer of health for Halton, for example, has published his calculation that ambient air pollution is responsible for 59 premature deaths a year in that county. In Peel, the number is 150.

With this background, the residents assumed that a terrible mistake had been made in suggesting that another gigantic polluter would be added to this mix and that the Ministry of the Environment would effectively block the development, in accordance with its mandate to reduce pollution, clean the environment and protect public health. They would do it by requiring the proponent to

undergo an individual environmental assessment which would clearly demonstrate how inappropriate this site was.

We assumed, wrongly as it turned out, that relocating an 800-megawatt gas generator downwind of the GTA would be a logical response to the OMA's report. We thought that adding to the ambient air pollution in the GTA by locating this gas generator upwind of Canada's largest urban population bordered on madness. The Ministry of the Environment didn't see it that way.

As events unfolded, the only action the Ministry of the Environment took in all the years we were engaged in this process was to begin, 13 years after it was originally announced, a small ambient air study that will conclude in 2006. We had to conclude that this small gesture, after such a long delay, was designed to divert the attention of the residents from the presence of another giant polluter in our stressed air shed.

Over three years, we learned the following about the process of dealing with the government of the day in general and the Ministry of the Environment in particular:

We found out that the Ministry of Energy had worked for 18 months with the company proposing to build this generator, helping it to locate its site, before there was any public announcement. In other words, the public was confronted with a fait accompli under government auspices. On its face, public consultation was not wanted and public consideration was going to be ignored.

We learned that the Minister of Energy and the Premier of the day combined the Ministry of Energy with the Ministry of the Environment, and it was the energy experts in that combined ministry who were looking at the environmental and health concerns of our objections. Written requests from hundreds of affected residents asking the Minister of the Environment to require the proponent to undergo an individual environmental assessment were not answered for more than a year. The fact that there were three different Ministers of the Environment in three years may be part of the reason for the delay. A petition containing 12,000 signatures of the residents in east Oakville and south Mississauga, presented to the Minister of the Environment in the Legislature, prompted this response: "Twelve thousand isn't very many."

The government of the day systematically gutted the environmental assessment process during our discussions with the company. The long-standing requirement, for example, that any change of five megawatts or more in the capacity of a generating station would require an individual environmental assessment, was revoked during this period to permit the development of an 800-megawatt gas station with no environmental assessment.

The new process did away with the proponent's requirement to provide a needs analysis, to review alternatives including alternative fuels and alternative sites, to dispense with a cost-benefit health analysis, to provide emission offsets, to eliminate any requirement for the proponent to use the best available control technology to

achieve the lowest achievable emission rates, and to commit to continuous technological improvement. When the ministry got done with its review, there was in fact nothing of material consequence left.

The environmental review process that gave interested parties, such as individual citizens and environmental groups, the opportunity to make their case in a public tribunal open to the media, was changed. The open public tribunal process was replaced by one in which the interested parties and the environmental groups were required to make their submissions in writing to a civil servant in the Ministry of the Environment, who replied in writing. There were no public hearings that the media could attend.

An appeal of the administrator's decision to a court was replaced by an appeal to the Minister of the Environment, whose decision was binding. After two years of trying to get the ministry to undertake what our community thought was their legal obligation, the minister changed the review process again and gave the interested parties 30 days to negotiate, arbitrate, mediate or otherwise settle their concerns with the proponent. In the absence of a settlement, the proponent's proposal would be accepted as submitted.

Those of us in CTAC who were struggling with this matter felt we were being toyed with and betrayed by the government. We felt then, and we still do, that the government was failing in its responsibilities under the law to maintain and enhance the environment and to protect public health. It was not doing its duty, as we saw it. It was not working with the citizens; it was working against them.

Now it had thrown up another major hurdle by requiring citizen volunteers to tackle a big, powerful commercial interest with hordes of highly paid technical experts to do a job that we thought the government should be doing for us. The resources arrayed against us were intimidating. Nonetheless, as required by the process, we responded by entering into negotiations with the proponent on a highly technical and scientific basis. We will be forever grateful to those technical experts who responded to our appeal for help with a generosity that gave us the courage to continue.

After five months, a detailed agreement was signed by our organization with the proponent that set forth a number of conditions, which the proponent would have to meet if it proceeded with the development. The detailed agreement resulted in an 80% reduction in the pollution of the residential areas closest to the plant. It resulted in an undertaking by the proponent to redesign the building and cocoon the generators to reduce noise. It produced a detailed commitment by the proponent to minimize noise and dust in the construction process.

We created the Southdown Station Citizens Advisory Committee, which will act as a permanent community monitor of the plant's operations. The membership now includes members of CTAC, our ratepayer affiliates, municipal councillors from Oakville and Mississauga and the MPPs from Mississauga South and Oakville. We

want the government to be involved in this process: an undertaking by the proponent to conduct a detailed four-year survey of ambient air quality in east Oakville and south Mississauga.

The scope of the agreement was such that the proponent withdrew his original application and resubmitted it to the ministry. The irony is that this agreement now obliges the ministry, since it has approved the agreement, to become a party to enforcing the terms and conditions that it was unwilling to impose itself.

CTAC and its friends have won some battles here, but we lost the war. The big guns in the ministry who should have helped us win this war were silent.

1030

What has happened since? To date, the generating station project has not proceeded because of the unstable state of the electricity market in Ontario and the unfavourable financial markets for new energy development. That may be about to change. Locally, there have been some significant changes. For one, thousands of residents have been mobilized on environmental issues. Our group now represents 10 ratepayers' associations, representing over 15,000 homes in Oakville and south Mississauga.

In the last provincial election, Mississauga South elected its first Liberal MPP since Confederation, and Oakville elected a Liberal in a riding formerly occupied by the Speaker of the Legislature. The new MPPs from Mississauga South and Oakville supported CTAC and the residents of their communities in opposing the location of this station in their midst. Undoubtedly, citizen awareness of the unresponsiveness of the government to its perceived responsibilities and the ineffectiveness of the local MPPs at the time played a part in that result.

This year, Oakville council has elected three councillors who have been active with CTAC and our efforts. On his first try for public office, CTAC's executive director lost the mayoralty race in Oakville by 28 votes in a recount against the incumbent mayor seeking her sixth term.

The Southdown Station Citizens Advisory Committee has responded to continuing local interest by adding four additional ratepayers' groups to our roster in the last two years.

We've been involved in a number of other activities as well, but with that little background I want to assure you that I'm pleased to be here today to support Bill 49. To me, it says that the government is now planning to do its duty on the environment.

I interpret Bill 49 and the announcements by the Minister of the Environment in introducing it as a welcome change in the government's approach to environmental issues. When Bill 49 was introduced, the minister said it was "part of the government's plan to create clean, livable communities. Our plan is about protecting our environment and respecting our communities." What a breath of fresh air that is. What a wonderful change.

Bill 49 is clearly more than an isolated statement about stopping the Adams mine becoming a garbage

dump. It's the first concrete step in the implementation of an overall plan to create clean, livable communities. I interpret this as the new Minister of the Environment stepping forward to become active in helping communities solve their environmental problems. I applaud her initiative.

Regarding the Adams mine closure, the announcement went on to say it was the government's intention that it "never be used as a landfill." Never is good. This means closure. It means the effort to stop the mine project will not have to be repeated, and it means the environment is protected for the future.

To the thousands of people in the north who have expressed their concern about the matter, the minister's announcement noted that "years of debate have drained the energy and resources of local communities." That sentence resonates loudly with my colleagues and me. We are one with our fellow citizens in the north on this matter. And I congratulate the Minister of the Environment for her acknowledgment of the stresses and strains the previous government inflicted on its citizens. I am delighted she is taking action to relieve them.

I am also very pleased with Bill 49 and the announcement that it is really an indicator to citizens of the government's desire to consult them about improvements to the environmental assessment process. The minister said she wants to make this process "more responsive to public concerns." Again, I applaud her.

As I think I demonstrated earlier, there is no question whatsoever that Ontario's environmental assessment process has been left in shambles by the previous government and is in urgent need of repair. One of the most important repairs would be for the government to make the process responsive to public concerns and not just to the concerns of special interests.

I might add that Ontario's air quality indices are also in urgent need of reform. The permissible levels of ambient air pollution, for example, are too high, and there is an immediate need to break down the silo mentality that governs applications for new polluters and to replace it with a comprehensive air shed approach that factors in incremental pollution.

Bill 49 specifically deals with the Adams mine for waste disposal. I interpret Bill 49 as acknowledgment by the new minister that waste management problems have been ignored for far too long by previous governments and that a new day has arrived for a provincially led waste management strategy. My contacts with local government have complained for years about the lack of leadership from the provincial government in dealing with waste management. Again I applaud the minister for taking an initiative here. It's long overdue.

For the record, I'd like to say here that I think urban growth and waste management are inseparable. I suggest that the cornerstone of any new approach to land use management, greenbelt preservation and environmental protection must include a requirement for each municipality to have a waste disposal plan that accommodates all of its wastes, preferably within its own borders.

Currently, Toronto and Mississauga have exhausted their landfill sites and are transporting hundreds of truckloads of garbage daily to Michigan. This is not a sustainable long-term solution to the problem of waste management. However, no community should be permitted to dump its garbage on its neighbours and no community should be required to have its neighbours dump garbage on them.

All new development should be approved only on the condition that there is in place a long-range program of waste management for that development which should be paid for by the development.

There are several other additional elements of Bill 49 that I applaud. They include the vesting of the Adams mine site in the crown in the right of Ontario. I interpret this as a welcome exercise of provincial sovereignty in resolving a contentious matter for the common good.

The Chair: Dr Upper, can you summarize, please?

Dr Upper: I'm almost finished. I have just a couple more items.

The only other one that I would like to comment on very briefly is that I'm delighted that legal action against this bill is being prohibited as part of the bill. Legal intimidation is a real chilling factor on citizen volunteers attempting to tackle vested interests in environmental matters. I would like to think that that provision might be extended to local government. Thank you very much. I do appreciate the chance to talk to you.

The Chair: Thank you, Dr Upper, for your delegation. Unfortunately we've run out of time, so there won't be room for questions.

RENEE SANDELOWSKY

The Chair: Our next delegation is Renee Sandelowsky. Welcome. If you could introduce yourself, and you're speaking as an individual; is that right?

Ms Renee Sandelowsky: Yes.

The Chair: You have 10 minutes. Welcome to the committee. If you could just say your name for Hansard at the beginning.

Ms Sandelowsky: Thank you. My name is Renee Sandelowsky. I'm a resident of Oakville as well as a newly elected town councillor in Oakville. Today I'm here to speak about the Adams Mine Lake Act as an individual resident on behalf of myself, not my position as a town councillor, because I didn't have time to bring this to council.

I'm very pleased to be here to give my support for the Adams Mine Lake Act, Bill 49. I believe it is an excellent beginning for this new government, a government that was elected largely, in my opinion, due to its promises to make responsible decisions with regard to our natural environment.

We, the residents of Ontario, spoke loud and clear at the polls. We, the residents, are desperately looking for leadership to help us protect and preserve our natural areas. Here in the GTA in particular, our green spaces are rapidly being gobbled up by development. Much of our

precious farmland, forests, creeks and wetlands is being destroyed in order to make room for more homes, more roads, more big-box stores and strip malls. Our lake is polluted, our streams are contaminated and many of us can barely breathe in our smog-filled air.

We want a government that makes environmentally responsible decisions and that's why we elected you. I believe that Bill 49 is just that—an environmentally responsible decision.

Ensuring that the Adams mine, a series of huge open pits blasted into the water table, with numerous fractures and lying between two major geologic faults, will never become a landfill site is a responsible decision, in my opinion. It's responsible because we just cannot accept the risk of contaminating the underwater aquifers that flow beneath the Adams mine. We cannot accept the risk of further contaminating any of our water supplies anywhere, much less here in a farming region. Ensuring that our environmental assessment process will be improved is an environmentally responsible decision. We cannot accept a process that allowed the fractured rock of the Adams mine to become the preferred alternative for a landfill site. I believe that a true environmental assessment would have shown that the Adams mine was not environmentally feasible. In my opinion, a true environmental assessment would have demonstrated that there were too many unknowns about the safety of using this abandoned mine as a landfill site. I believe that a true environmental assessment would have denied this application.

1040

Ensuring that the federal and provincial governments will coordinate the environmental assessment process is a fiscally responsible decision as well as an environmentally responsible one. How many hours and dollars have been wasted in the nightmare of bureaucratic red tape while duplicating the process at two levels of government? Ensuring that our government is going to support a 60% waste diversion target is a laudable start to finding ways to reduce the province's reliance on landfills. We have to do something. We absolutely cannot continue on the path we are on. I'm hoping this government will lead us on to a better path, one that is environmentally responsible and sustainable, because I want to be sure that our children and our children's children will be blessed with a clean and healthy environment in which to live and prosper.

Thank you very much for taking the initiative with the Adams Mine Lake Act. Please know that we in Oakville will stand behind you whenever we see you doing what's necessary to protect our environment. We want you to be strong, we want you to protect what's important to us, so please think about the good of the people. You are elected to protect the health and the environment of the people who live here, so please pass this act.

Three last items, while I'm here:

First of all, please don't penalize Halton region for doing a wonderful job of locating and extending the life

of its landfill. Halton has worked hard to do the right thing. I know Toronto can do the same.

Secondly, please do everything in your power to protect Oakville's remaining green space. If you act quickly, there's still time. In coordination with you, the province, the region and the conservation authority, the town of Oakville has created, on paper, a magnificent natural heritage system that will go a long way in protecting and preserving our significant natural features for generations to come, but we need your help in order to make this natural heritage system a reality. So don't be shy. Please do what you can to give these lands the protection they need through Bill 27, the Greenbelt Protection Act, or ministerial order. But, please, we need your help to save these lands. Once they are gone, they're gone forever. Our children will not be thanking us for a legacy of more big-box stores, but I think they will thank us for preserving our green spaces and protecting our water and air.

Finally, I would respectfully like to remind Premier McGuinty of his election commitment to protect the 1,100 acres of provincially owned lands in north Oakville by helping to create a park for all to enjoy.

That's it. Thank you very much for giving me the opportunity to speak. I hope you have many more great environmental initiatives to come.

The Chair: Thank you. I have a questioner.

Mr Prue: There are three separate councillors coming forward from the town of Oakville. Are all three of you saying the same thing? Did you consult each other? You said there was no municipal position on this.

Ms Sandelowsky: I don't know. There isn't a municipal position because I didn't have time to go talk to anybody about it. I don't know what the others are saying. I do know that Councillor Elgar had to leave. His mother is very ill, so he won't be here today.

Mr Prue: So he's not here. And the last one, Councillor Adams?

Ms Sandelowsky: I think he is coming but I don't know what he's going to say.

Mr Prue: OK. Thank you.

Mr Ernie Hardeman (Oxford): Thanks very much for the presentation. I have a couple of questions.

We've been hearing from all the presenters, I believe, except the proponent of the Adams mine proposal, the issue of its being a good idea to stop the Adams mine because it isn't environmentally sound. In the same presentations we hear that we should all emulate what happened in Halton region because they have what is required for landfill capacity. Not having been from either community, I understand that they both went through exactly the same process, both with a fair amount of opposition to its being approved, both getting to the point of final approval from the Ministry of the Environment. As a councillor from Oakville, how would that have rested with you, having gone through all that cost and work, to then have the government—which up until then had said, "We have no responsibility, only to set the rules and make sure that it's done properly"—say, "No; for

political reasons, we are not going to allow this one"? Halton would not have a site and would have the problem of no place to put their waste. Would you have the same presentation on that as you had for the Adams mine?

Ms Sandelowsky: I just have to tell you, I wasn't here when the Halton landfill came into being so I don't know all the details about it. What I can say is that when I believe there's good reason not to do something, even if you've gone through a long process that might have cost some money, I still think you have to do the right thing.

Mr Hardeman: I guess my problem, though, from your presentation—and maybe I missed it—I didn't hear anything where you had gathered evidence or had any documents that showed that there was good reason. As a member of the loyal opposition, the government has so far not given me any indication that they have good reason, other than, "For political reasons, it is not accepted by the community." I wonder what drove you in particular to the conclusion that government should step in after the people and the communities who were supporting it had followed it every step of the way and got the approvals they required, we have a finished project, 15 years of work, and then the government says, "No, we don't like it."

Ms Sandelowsky: You ask very long questions. I'm trying to remember it all. First of all, to me it's not for political reasons. But I've seen—and I am a new councillor, so you have to give me that—an environmental assessment done on the 1,100 acres of land in north Oakville and I saw that that process was not, in my opinion, a legitimate process at all. I saw them say that they were doing an environmental assessment on these lands and all that happened was that the process was an assessment on the actual transaction, the sale of the lands. They didn't do any assessment on what's going to happen to these lands if they're developed, how environmentally sensitive they are. The only assessment was, what happens if you sign a document that says, "We will sell these lands to developers"? That's it. So obviously there was nothing wrong with doing that. It didn't cause any damage, so you were allowed to sign the papers. That's my experience with environmental assessments. I think the system has to be changed. It's not a good system. It doesn't work. That's why I said that I'm pleased that there will be a better process for the environmental assessment.

I can't remember the rest of your question, I'm sorry.

The Chair: Perhaps you can chat about it afterwards.

Ms Sandelowsky: That's fine.

The Chair: Thank you for your presentation. On behalf of the standing committee on the Legislative Assembly, I appreciate your coming today.

REGIONAL MUNICIPALITY OF HALTON

The Chair: Our next speaker is from Halton region, Joyce Savoline. I believe Ms Savoline is being joined by Mr Krantz, the mayor of the town of Milton, and Mr Marshall, the chief administrative officer. Welcome. If, for Hansard, you wouldn't mind introducing yourself and

the group that you speak for—I believe you're speaking for Halton region; is that right?

Ms Joyce Savoline: That's right. My name is Joyce Savoline and I am chairman of Halton region. I am joined today by the mayor of Milton, Gordon Krantz, and the CAO of the region of Halton, Brent Marshall.

Good morning to everybody. I'm really pleased to have this opportunity to yet again tell you about the Halton experience. I'm very pleased that the mayor and our CAO have been able to join us today. When it comes to time for questions, please feel free to ask any one of us.

Let me begin by saying that, unlike many of the other speakers, perhaps, I'm not here to tell you what the future of Adams mine should be. I'm not here to tell you whether or not you should pass Bill 49. Rather, I'm here today to talk about the process and how the process may affect Halton region, and I am here today to speak to the issues of fairness, procedure, precedents, responsibility and accountability.

1050

My concern, as chairman of Halton region, is that a decision on today's proceedings regarding the future of Adams mine could negatively impact the residents of Halton region. My concern is that a decision rendered on Adams mine could reduce the options available to you with regard to waste disposal at a time of crisis.

Halton made the responsible, forward-thinking decision, along with a sizable investment, to create a made-in-Halton solution. Halton taxpayers paid, through property taxes, for our landfill site. We spent in excess of \$100 million for the process and the site development. We also had to export our garbage in the middle of the 1980s.

You should know that when we shopped around for interim capacity, all doors were closed to us. We even suggested reciprocal agreements. We would, at a future date, receive the same amount of garbage from another municipality that would take ours in the interim, and we were told unequivocally, "No, thank you." Halton was told, "Get on with the job," and we did. We did it admirably. We spent an enormous amount of money, time, and, none the least of which, emotion. Others have failed to do this.

We do not want to revisit this experience—not in our lifetime. Literally, the experience among our community was so negative that the wounds are still fresh today. Through an understanding, an appreciation and a full participation by our residents, we have increased our diversion efforts and doubled the life capacity of that landfill site. It was originally opened with a 20-year capacity with the condition that we would open EFW within eight years, and then that option was taken away from us. We included other diversion efforts. We now have, after 12 years of use in that landfill, a 40-year life capacity for that site. Our residents have taken ownership of the importance of diversion. So we've increased that diversion to double the lifespan of our landfill to avoid similar experiences in the near future.

The EA process, as I've heard other speakers talk about, is badly broken and it needs to be revised. The government needs to legislate changes to enable timely solutions when a process begins. Halton's experiences prove that the EA process is lengthy, costly and totally unpredictable.

We were the first municipality to endure that EA process when we tried to site a landfill site. We began back in the late 1980s with what was deemed to be the environmental protection process. That was the process that we needed to go through to find our landfill site. Politics played a big part. That process, after two and a half years, was eliminated, and we were deemed to be under the Environmental Assessment Act. That whole process began—ladies and gentlemen, it took us 14 years, and it took us almost \$100 million to get through all of that. That's unreasonable. It's unrealistic.

We began that process about 1978. That was the Environmental Protection Act process. We switched to the EA process. We began that in about 1981. So it took closer to 12 years. There were 50,000 pages of transcript during the hearings. That's not even including any of the studies that we went through during those 12 years. If you stand those studies up, they're almost as tall as I am. It was onerous, frustrating, highly emotional and extremely costly.

The nature of the issue is that it breeds divisiveness, and this is fostered by a process that is not finite. Organizations engaged in the provincial EA process are vulnerable to also being embroiled in a federal EA process if there is deemed to be federal interest. So think of the complexity that's involved when that kicks in.

The province must be engaged. You must be engaged to change this process to allow for landfill applications to move forward in a more timely, realistic and predictable manner.

We can all agree that the issue of not finding a long-term waste disposal solution quickly really is a crisis in the making. All the ingredients are there for that crisis to occur: primarily, that many municipalities would not be taking care of their own waste. They don't do it today, so that crisis is looming.

Exporting our garbage leaves us vulnerable to the control that exists within another country or another state. These changing circumstances are, of course, responding to the new environment in which we live. It's not a matter of that excellent relationship that Canada has with our neighbours in the US, but the threats of terrorism prompt increased security and potential border closures. That's just the reality of today. Circumstances beyond our control leave us in precarious predicaments when it comes to deciding how to dispose of our waste. US citizens don't want our waste; we don't even want our own waste.

Halton is looking 40 years into the future while some municipalities are still 20 years in the past. Halton's experience should have been a huge wakeup call for the municipalities around us that were beginning to run out of landfill, but they did little. Three municipalities in the

greater Toronto area actually have standing, active resolutions that do not allow them to site a new landfill within their municipal borders. How realistic is that? Yet, that is allowed to continue while other municipalities like Halton are threatened with receiving their garbage. We take offence at that. Municipalities should be forced, through acts, to look after their own garbage in a timely way, within their own municipalities; maybe through an official plan—who knows?—but something should be done.

Ontario generates approximately 13.8 million tonnes of waste per year. Almost half of that—45%—is generated right here in the greater Toronto area. Those are two-year-old stats, so who knows where that number has reached so far. Some 9.4 million tonnes that have not been diverted have to be disposed of somehow. We've disposed of about 6.4 million right here in our own municipalities and three million get exported out of the province. Those are stats that exist.

We know that continuing to export our garbage to Michigan is not a sustainable option. Artificial cost is narrowing the gap between that exporting venue and disposing of our waste in our own communities. So where it costs much less to ship garbage to Michigan than to look after it here, that gap is closing because of all kinds of things like gas prices and new rules for drivers who drive those trucks. They have to do it in shorter time frames, so it increases the cost of that travel.

We need to look at the options that are available to us here, within our own boundaries. We need legislative control to do that and we should plan and control our own destiny. We need to recognize that waste disposal is the concern of each of our municipalities, not our friends' and neighbours'. It is not realistic for some municipalities to have passed resolutions in order that landfills are not permitted within their geographical boundaries. This is NIMBYism at its worst, and they are applying it even to their own garbage.

This issue becomes even more complex when emotions kick in. That's why I'm so adamant about sharing our Halton experience with you and with other municipalities. We need to move forward. We can avoid the pitfalls and show you how that can happen. Halton is already working with the other GTA municipalities. Halton is working with Hamilton and Niagara. They're all trying to site landfill sites. We work with them in a very co-operative way. We also want to participate in any options that may come forward so that we can engage with other municipalities for further waste diversion. But we need to get off this treadmill and make some advancements. We need the ministry to force municipalities to develop these strategies that would see each of us take care of our own waste. The process doesn't allow for that right now.

The solution must be realistic, to address the lack of predictability in this process. There must be established within that EA process a finite timeline for the establishment of new landfills.

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The process that we need to engage in must be open, but it cannot be open-ended. That means all options need to be on the table. I suggest that in the interests of fairness, no options that have not been eliminated for technical reasons be removed at this time; or if it is the decision of the government to be predisposed to removing options to landfill in a time of crisis, then I am seeking assurance from you that Halton region's landfill also be removed as an option.

Surely the case has been made already to eliminate Halton's landfill waste management site as a possible short- or long-term solution to the waste disposal woes we have today. If you were to bring Toronto garbage to Halton today, in two years Halton would not have a landfill, and yet for Halton's purposes we have 40-year capacity. That is a very different number. This is a question of political fairness and that's how we feel about it in Halton.

Please eliminate Halton's landfill site and any municipal landfill sites which are unwilling hosts from the list of options to be considered in a time of crisis. Please amend the certificates of approval to include the option for private landfill sites to take this garbage. There's lots of capacity in those sites now.

Precedent has been set. Green Lane Environmental landfill—the ink isn't even dry on the agreement—is just accepting Guelph's waste. That site is in St Thomas, it's close to the GTA and it has capacity to receive this waste.

There are other such private landfill sites in Ontario that can easily accommodate this waste in a time of crisis. Give some predictability and some comfort to municipalities, who have spent property taxpayers' money to develop these sites, and allow the private sector to look after the issue. They have the capacity, probably, to take Toronto's waste for a good four years or more. In fact, Green Lane was second on the hit list when they were looking for interim measures. Michigan won out, and I bet you for price. Already this has been done in the city of Guelph, and I feel it can be done for the city of Toronto.

Embark on a formal review of the EA process so as to streamline it. Inject some measure of certainty into the process, some predictability and reality. Ask the WDO to negotiate the acceptance of organic waste as a designated waste. That's a really important factor.

In summary, I want to emphasize to you that in raising these issues, I do so with the unanimous support of all the mayors in our municipality: Mayor MacIsaac from Burlington; Mayor Mulvale from Oakville; Mayor Krantz is with me today from Milton; and Mayor Rick Bonnette from Halton Hills. They say so without any reservation.

I'd like to ask you to respect the work that Halton region and our residents have done in becoming a waste disposal leader in Ontario. Typically, leaders are heralded as examples to others and not penalized for being responsible. So I would ask the ministry that, regardless of the decision on Bill 49, you also act responsibly and

guarantee that the repercussions to Halton that would be seen do not become part of the short- or long-term solution for waste from other municipalities, and exempt Halton and other municipal landfill sites from any solution to a crisis in the diversion of landfill.

The Chair: Thank you. We have a very limited time for questioning.

Mr Leal: I'll be quick for you. Chairman Savoline, thanks very much for your presentation. What's your current diversion rate in Halton?

Ms Savoline: We're at almost 42%.

Mr Leal: With your great work, how quickly can you get to the 60% diversion rate?

Ms Savoline: We have options we have been considering over the last two years. We are very careful about how we consider options. We like to create successes from the ground up; we don't like to experiment too much. We have reports coming forward this fall that will lead us into areas, perhaps organic waste and others, that take us much closer to the 60% diversion.

Mr Leal: Will you be building a centralized composting operation for the region?

Ms Savoline: We are determining all that through our reports and process this fall; that discussion hasn't taken place yet.

Mr Ted Chudleigh (Halton): Just very briefly, the previous government, our government, had a policy that no community would be receiving garbage without their approval. We've asked that of the current government and that hasn't been forthcoming. If there were a crisis in which Toronto had to divert its garbage, could there be a quid pro quo to allow Toronto to dump some garbage here if they took some garbage back, much the same way as you asked other communities to do when you were in a shortfall position?

Ms Savoline: We had some discussions with the minister. Those discussions have not been concluded yet, so I don't have an answer.

Mr Chudleigh: Is that still on the table?

Ms Savoline: We just haven't concluded the discussions; it just hasn't happened yet.

Mr Chudleigh: I'd recommend against it, if you're looking for an opinion.

The Chair: Thank you for your delegation this morning. We appreciate your appearing before the standing committee on the Legislative Assembly, and we appreciate your words and attendance.

Ms Savoline: Thank you, Ms Jeffrey.

MIKE LANSDOWN

The Chair: Our next delegation was to be Mr Elgar, councillor for ward 4, town of Oakville. I understand he has been called away and an individual will be reading his submission. Good morning. Welcome. You're here to read the submission?

Mr Mike Lansdown: I am.

The Chair: Mr Elgar was speaking as an individual; is that right?

Mr Lansdown: I believe so.

The Chair: OK. You have 10 minutes to read his submission, and if you could introduce yourself for Hansard.

Mr Lansdown: My name is Mike Lansdown. I'm a resident of Oakville and a founding director of a citizens' association called Oakville Green Conservation Association, Inc. We are a group that was formed in 1999 because of our interest in responsible environmental management and planning.

"Six years ago, prior to" his "election to council," Councillor Elgar "founded Oakville Green Conservation Association to provide a representative voice for a significant number of Oakville residents interested in ensuring environmentally compatible planning in our local area."

In addressing you on Councillor Elgar's behalf, I fill the roles that he also fills. "Oakville Green continues to be a strong voice for environmentally responsible planning in the communities of Oakville and the region of Halton, and discharges their advocacy responsibilities through a strong communication system supported by an active Web site at www.oakvillegreen.com and numerous opportunities for dialogue with its membership, with all meetings being entirely open to the general public."

On behalf of Councillor Elgar, I wish to note that he and I strongly support "Bill 49 and welcome the government's recognition and use of its inherent powers to protect the environment and the public. It is evident that this government understands the quality-of-life issues that brought it to power. It is also our considered opinion that filling lakes with garbage is a perfect example of how not to deal with the problem of waste management.

"We are very grateful to the committee for choosing Halton as one of the locations for its hearings on Bill 49."

As I'm sure the minister is fully aware, following extensive communications from our regional chair, Joyce Savoline, who spoke to you just before myself, "our municipalities in our region have worked hard over the years to develop an extremely responsible waste management system. Through good planning and good management we have moved from a crisis situation several years ago to a system today that is well under control. Prudent management of leading-edge source separation technology has even resulted in our being able to substantially increase the expected life of our waste site.

"As further evidence of good management and the recognition and understanding of the huge role that waste management plays in the infrastructure of a growing municipality" and not satisfied with our present status quo, our region recently signed partnership undertakings with our neighbours in Hamilton and the Niagara Peninsula to research all available technology and opportunities to extend our waste management capacity even further into our planning future.

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"As I'm sure the minister is well aware, the preamble to the provincial policy statement of the Planning Act advisedly cautions all parties to get it right the first time. We believe that Halton's responsible waste management

system demonstrates our understanding of this statement, and we further believe that Bill 49 is another reflection of this important principle."

On behalf of Councillor Elgar, I thank you once again for this opportunity to address your hearing on this important piece of legislation. "I believe I speak on behalf of both levels of government that I represent when I say that the town of Oakville and the region of Halton stand ready to share their waste management knowledge and principles where it might help to resolve the problems of other municipalities."

Minister Dombrowsky, those are my comments respectfully submitted on behalf of Councillor Elgar. I'll be happy to answer any questions.

The Chair: Mr Prue, did you have any questions?

Mr Prue: Just on a point of order: How can someone reading someone else's submission answer questions on their behalf? I don't think we should entertain them, that's all.

The Chair: Mr Flynn, do you have any questions of this delegation?

Mr Kevin Daniel Flynn (Oakville): I think I do.

Mr Prue: I think you have to rule on that.

The Chair: I'm going to allow him to speak.

Mr Flynn: I think when you hear the question, you may understand why it can be answered under these circumstances. Mike, you're a member of regional council. I heard in the House the other day the member for Burlington say that the previous government had given a guarantee that Toronto trash would not come to Halton. A previous question also said there was a policy that said that Toronto trash would not come to Halton. As a member of regional council, would you be able to find that undertaking for me?

Mr Lansdown: I can certainly undertake to do so, Mr Flynn, but I can't put my finger on it right away.

Mr Flynn: No, obviously not, but at some point in the future I'd be interested in seeing that in writing. I wasn't aware that it existed in the past. Surely it must reside somewhere at the region of Halton if it was in fact put in writing.

Mr Lansdown: I will certainly be happy to inquire.

Mr Chudleigh: I believe it's in the chairman's office. She asked for that guarantee and we gave it to her.

Mr Hardeman: It was in the presentation, and as the Chair ruled we can ask questions because you do have the expertise, the same as the author of the letter—it's the same question I had before. You made reference to the high quality of the waste management system you presently have in Halton and that others should do the same. The mine went through exactly the same process, almost exactly the same length of time, I believe they spent slightly more money, but when they got to the point where they could implement it or start to implement it, that's when this bill was introduced to take away the certificate of approval they had received. Would that not have been a bit of a problem in Halton, if just at the time when you'd gone through this whole process—and I think the regional chair suggested \$40 million of ex-

penditure to get to that point of certificate approval—the government of the day had said, “No, you can’t do it. We’re going to take away the certificate at this point in time”? I can’t understand the rationale.

Mr Lansdown: I’m not able to help you with the rationale because I do not have the background on the rationale that underpins those two separate and apparently opposite decisions. So I cannot help you with the answer to that question.

Mr Hardeman: I guess the question really was, then, how can we say that this bill is a decision in a certain direction if we don’t have the information on the decision?

Mr Lansdown: The only response I could possibly give you to that is that it would appear that environmental assessments were taken in both cases, and the one in the case of the Halton region landfill site was found to be acceptable. I do not have, as I say, the expertise or the background as to how those decisions were made to be able to answer that from an authoritative point of view.

Mr Hardeman: OK.

The Chair: Thank you, Mr Lansdown.

Mr Lansdown: If I may just explain my presence here this morning, unfortunately Councillor Elgar’s mother was required to attend for a CAT scan at a Toronto hospital on an emergency basis. Councillor Elgar only got the information late last night and asked me if I would stand in for him at this event. So it is an emergency situation. I apologize for not being better informed in terms of the technical questions, but I don’t have that technical expertise.

The Chair: Thank you very much for appearing and stepping into the fray. We appreciate your appearing to provide the delegation.

NORTHWATCH

The Chair: Our next delegation is Northwatch. Speaking is Ms Lloyd, the coordinator. Good morning. Welcome. Thank you for appearing before the committee. I understand you’re speaking for Northwatch, which is an organization. That would give you 20 minutes to speak before us. If you wouldn’t mind introducing yourself for Hansard, and the organization you speak for before you begin.

Ms Brennain Lloyd: Thank you, Chair, and members of the committee. My name is Brennain Lloyd. I work with Northwatch. We’re a regional environmental organization, a coalition of environmental and social development groups in northeastern Ontario. I would like today to speak to the substance of Bill 49, but also make some introductory remarks and speak briefly to the context from our perspective for this bill coming before you and before the Legislature, and address some of the specifics of the bill as well before concluding.

As I said, Northwatch is a regional coalition. We were created in 1988. We emerged out of two networks within our region. Really, we were motivated as a coalition or as a regional entity by a number of pressures we saw that

were region-wide, including some fairly large and predicted-to-be and proved-to-be lengthy environmental review processes: the class environmental assessment of timber management on crown lands in Ontario—if you would like to discuss lengthy EAs, that would certainly be an example—and a federal environmental assessment of a proposal to bury nuclear waste in the Canadian Shield, by all assumptions and predictions again in northern Ontario.

We saw, as local volunteer groups throughout the region, that we didn’t have the capacity to respond and engage fully and effectively in these very large but very important processes—very important for the future of our region, very important in terms of both the environmental outcomes and certainly the social outcomes as well. So we created a regional organization to provide us with that representative voice and that regional voice, as well as retaining those networking functions that allowed groups and individuals across the northeast with a concern and interest in environmental protection to work together and to support each other.

Northwatch was in place when, in 1989, we began the very long and arduous task of defending ourselves and our region against the Adams mine proposal. As a regional coalition, we focus on regional issues. Those are mostly crown land, natural resource management issues, mining and forestry; certainly waste issues. Unfortunately, I think in our case in northeastern Ontario, most of our work around waste has been responding to various waste import schemes. We’ve seen perhaps the full range—I hope the full range—and most of them have come and gone. We’ve seen proposals for the import of low-level radioactive waste from southern Ontario; repeated versions of the scheme to bury high-level radioactive wastes in northern Ontario; proposals for PCB incinerators, for PCB treatment facilities, for biomedical waste facilities; and again and again, proposals to become the receiving ground for very large volumes of Toronto garbage.

We were fortunate, I think, to have a regional organization in place in 1989, when the Solid Waste Interim Steering Committee released its list of potential receiving sites for Toronto garbage, and it included a number of locations in northeastern Ontario, and one of them, the one that survived to plague us the longest, was the Adams mine proposal.

That’s the background and the experience, I think, that we bring to this work, and it has been 15 years of work on this proposal.

The context for our presentation today and our comments on Bill 49 is very much, and I think quite obviously, driven by our experience with the Adams mine proposal and the various proponents, the various promoters and the variations of the proposal that we’ve dealt with over the very many years.

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It all began in 1989, as you know, with the Solid Waste Interim Steering Committee, and we’ve had a number of highlights, a number of low points throughout the last 15 years. In 1990, I think we had a high point

when the Bob Rae government, the NDP government, announced that it would not be moving in that direction, that it was going to develop new initiatives to direct waste management, responsibilities being kept at the local level. That was a high point, which was not successful.

The Adams mine proposal did return a few years later, and in 1995, we had another high point when Metro Toronto turned the proposal down. What they rejected was the option of becoming the proponent of actually taking on the site and developing the site. They turned it down for good reasons, both fiscal and other liability concerns, as we understood it at that time.

In 1988, we had what should have been a high point but turned out to be very much a low point, and that was the referral of this project for an environmental assessment and an environmental assessment hearing. It should have been a high point, because an environmental assessment should thoroughly review a project: the need, the purpose, the environmental conditions the project will take place in, the environmental effects, how those effects can be managed or mitigated. A full and fair review process, we believe, would have resulted in the rejection of the Adams mine.

We didn't get a full and fair environmental assessment. We got a very scoped review, and it was scoped in two ways: at the onset, by accepting the proponent's position that "need" should be defined as a business opportunity. There was never an analysis of the need or the purpose of this project, which is central to a sound environmental assessment process, and then a scoped environmental assessment. So, in fact, what we had was a 15-day hearing that was restricted to only one question: Will the hydraulic trap containment concept effectively control leaching?

The big debate was, you'd fill a large hole with garbage, let all the water run through to, in effect, wash the garbage, contaminating that water, producing 83 billion litres of contaminated water. All we were allowed to look at in that scoped environmental assessment hearing was whether the water would move out through the walls of the pit, whether we would be contaminating the groundwater. That's all we were allowed to look at.

We weren't allowed to look at the question of what happens when you take 83 billion litres of contaminated water and dump it into the receiving surface body. What's that going to do to the Misema River, to the Blanche River downstream from that, to the Timiskaming watershed as a whole? That question wasn't on the table. So no one can call this a full environmental assessment hearing, and no one can call it a full environmental assessment, even though many do. But no one can call it that with justification, in our view, and it's a view informed by both an understanding of the act and our experience with the act.

At the end of that hearing, there was no decision. There was a split decision, the first split decision in at least a decade. The Environmental Assessment Board themselves couldn't decide. Of the three-member panel, one member said, "No, it's not a go. It should be turned

down," and two other members said, "Well, we don't really know. We hear this on the one hand, and we hear that on the other hand. So give us a couple more drill holes, and maybe then someone will know enough."

But instead of keeping that responsibility for themselves and having the information returned to them and continue the EA process in a public and transparent manner, they referred that information to a bureaucrat within the Ministry of the Environment. That bureaucrat was supposed to issue a final decision saying that, without reservation, those final drill holes had demonstrated that hydraulic trap containment would work. That statement was never issued. The certificate of approval was issued for the landfill, and we all know the story from then.

Part of the story we don't hear very much, and we certainly didn't hear it from Mr McGuinty this morning, is that that was only one of several permits that were required. So by no means was Notre Development or Rail Haul North, or whatever configuration you want to refer to them by, at the end of the permitting process. They still had a number of permits that were outstanding. That was 1998, and I would say it was a low point.

In 2000, you've already heard of in some conversation this morning another what I think was a high point, and that was the breakdown of contract negotiations between Toronto and Notre Development. I think Mr Prue characterized it correctly. In our understanding, it was a refusal on the part of the proponent to retain responsibility, to retain environmental liability for the project over the long term. So Toronto, quite rightly, said no. We would have liked them to say no sooner on other terms, quite rightly, but we were satisfied with that in the end.

Now we're here in 2004, and you can see we've had high points every five years. It was turned down in 1990, 1995, 2000, and here you are a year ahead of schedule, 2004, and we have Bill 49, which I think is going to conclusively end this conversation. I certainly hope so.

That's the context or the experience we bring to Bill 49 in terms of the Adams mine.

I also want to mention just very briefly, though, that on April 5, the day Bill 49 was announced, there were other initiatives announced as well which I'm sure you're familiar with that I know aren't before the committee. We just want to say briefly that we do very much welcome those other initiatives. A review and looking to improvements in the environmental assessment process are very welcome, and we're hoping to be able to contribute to that exercise. It's overdue. I think there are a number of improvements that could be made and we look forward to being part of that discussion.

The waste diversion management paper and discussion that will follow are also very central to this general debate. We have some questions about the targets, whether 60% by 2008, coming in two years after Toronto, is really setting the bar high enough. We'd like to see it lower, but that's a discussion we think is going to be had in the context of that exercise. From northeastern Ontario, we are excited at the opportunity to actually

participate in discussions about waste diversion in our own home communities, and how we can make our own improvements in the region, rather than spending all of our time dealing with these import schemes.

Speaking more specifically with respect to Bill 49, we welcome this bill. We think it's decisive and conclusive. We think it brings an effective closure for all parties: for ourselves, for the various governments that are involved and for the proponent. It clears the way for the central issues of waste management, waste diversion and waste reduction being put first and foremost in our thinking and given our attention.

There are a few areas where we think the bill could be improved. One is with respect to the use of the language around "lake." We appreciate very much where the drafters were going with that, but we think where they were trying to go and didn't quite get to is a declaration or a prohibition against placing waste in the water table. I think there is some potential for confusion around using the word "lake" when we're actually referring to various surface bodies, including pits and quarries and so on. The central issue is, are we going to put solid waste in the water table? Should we do that? No, we shouldn't. That's a simple improvement that could be made to the act, and I think it would bring a lot of clarity, both in its passage and certainly in its future use.

The other area where I think we can see some improvement is with respect to compensation. We're not taking an extreme position on this. We're not saying, "Absolutely nothing; not a cent," but we are saying there needs to be an abundance of caution applied here. We were surprised and disappointed to see that the compensation was available back as early as 1988. If there is any call or any cause for compensation, I would think the very earliest it could go back to would be 1999, after the first of several permits that were needed was issued. To go back to 1988 I think is saying that any time any business person engages in pursuit of a business opportunity and they are unsuccessful, they can be rewarded; they can be compensated for that. I think that's extremely problematic.

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Even in the instance of going back to 1999, though, I want to urge some caution. I think of other examples where this situation could come into play. I haven't got a specific example, but I'd ask you to imagine, for example, a manufacturing a mining operation that is issued a certificate of approval, perhaps they even begin operating under that certificate of approval, and the certificate of approval is found not to be sufficiently protective—it's not doing the job, it's not protecting the environment, so it's revoked. Well, does offering compensation to Notre Development and the numbered company, Mr Cortellucci, set a precedent for future compensation claims, when clearly the law allows you, as legislators, and your responsibilities as legislators to demand that the province act in the public interest, and that would include revoking certificates of approval that were not protective of the environment?

I just urge caution on that count. I think it's fraught with peril. What we would like to see is an abundance of caution, some transparency to the process, and we would ask that you at least consider in clause-by-clause pulling that date up to 1999 or even later.

Certainly, there are some expenses on the list that look pretty suspect. What do promotion and marketing include? Does that include every lunch that's ever been bought? I don't know, but I don't want to pay for it. I certainly wasn't on any of those lunches.

In closing, I want to say that despite those two areas of concern that we have, we very much support this bill. If it were a package deal, if it came down to that, "Take it or leave it," we'd take it. We would take it and say thank you very much, thank you for finally bringing some conclusion to this 15-year saga and allowing so many people of northern Ontario and throughout the province to get on with the real work of waste diversion and waste reduction.

Mr Leal: Thanks very much for your presentation, Ms Lloyd. I've heard contradictory evidence this morning.

In my question to Mr McGuinty, he assured me that his consulting firm Gartner Lee concluded that leachate wouldn't escape from the Adams operation.

I note in your submission here that in 2003, Ken Howard, a hydrogeologist, was hired by the Timiskaming Federation of Agriculture. What's his background? Does he have extensive experience with landfills? He concluded, I take it, that leachate escaping would be a major problem on this site.

Ms Lloyd: I only know Ken Howard's background very generally. I believe John Vanthof is appearing before you this afternoon. Mr Vanthof can certainly answer those questions in detail. He's a hydrogeologist, he has extensive experience and he is well respected. I can't cite his credentials the way I expect Mr Vanthof will be able to, but he is a very credible expert in this area; I think he is one of the leading experts in the province in this area. He concluded that the hydraulic trap containment concept was not sound.

Mr McGuinty's consultants concluded that—I can't recall word for word whether they ever said it would never leak or if they just said that there is no evidence that it will leak. The absence of evidence is not the evidence of absence.

We had more than Mr Howard; we also had Mr Bowen, our expert witness during the Adams mine hearing. Mr Bowen said that there was not sufficient evidence that he could not say that the hydraulic trap containment concept would work. He could not prove that it would fail. That's the difference between our expert who said, and he was very cautious, "I'm only going to say what I know I can absolutely, irrefutably forever say. I can't say that it will work," whereas Mr McGuinty's consultants took a more carefully broached approach and said, "There is no evidence that it won't."

Mr Leal: I can ask my question again later today, then?

Ms Lloyd: Yes.

Mr Leal: Good. Thank you.

Mr Prue: Two things: I note from your Adams mine chronology that it was not until 1996 that Notre Development announced they were going to proceed as a private sector proposal. You were talking about 1999. They may have a case. But I fail to see the government legislation back to 1988. I fail to see it anywhere. I have no idea why that number—and we will be raising that. Do you have any explanation?

Ms Lloyd: It was late December—I think around December 20, 1995—that Metro Toronto rejected the option of becoming the proponent themselves. So it was early in 1996—I can't recall the exact date—that McGuinty announced they would be proceeding as a private sector proponent.

Many proponents and would-be proponents can bring projects forward that may or may not be sound, may or may not be approved and may or may not ever find a contract to bring their business into fruition. So even from 1996, I don't think he has a case.

1140

Mr Prue: OK. My second question, and perhaps the more important one, is the definition of "lake." I have to tell you, I was puzzled by that too, because the Adams mine pit cannot meet the definition of "lake." First of all, I don't think anything grows in it because of the mine tailings. Is that—

Ms Lloyd: There were some fish found in it.

Mr Prue: I think that's in a minor pit. That's not in the big one.

Ms Lloyd: But I think it's not a lake. It's not a natural lake. Locally, people do refer to it as a lake, and I think there was some appreciation for the sense of solidarity on the part of the government in adopting that term. We might all agree to call the Adams mine pit a lake, out of respect for local sentiment and so on, but I think we need to look beyond the Adams mine. I think we need to look at all of the other applications of this act. I think re-defining "lake" is too cumbersome. I think making it "water table" is much clearer and much more straightforward.

Mr Prue: So any body of water within the water table?

Ms Lloyd: I think any placing of waste within the water table. I don't think an engineered landfill that was going to dig into the water table in a greenfield site should be approved either.

The Chair: Thank you, Ms Lloyd, for your presentation. We're out of time, unfortunately. I appreciate your coming and giving us your presentation and your delegation.

PUBLIC CONCERN TIMISKAMING

The Chair: Our next delegation is Public Concern Timiskaming. Mr Graves is the steering committee member who's making the presentation. Welcome, Mr Graves. You're speaking for a group?

Mr Terry Graves: Yes, I am.

The Chair: You have 20 minutes. Once the handout is handed around, perhaps you could introduce yourself and the group that you speak for, for Hansard, please.

Mr Graves: I think I can be fairly brief, since my good friend Ms Lloyd covered a lot of the area that I was going to cover. That's not a criticism at all. She did it very well.

I'm a resident of Bucke township in the district of Timiskaming. My name is Terry Graves. I moved to Timiskaming in 1978 from the shadow of a reactor site in Pickering. Within a year, there was a proposal by Atomic Energy of Canada Ltd to deposit spent fuel rods just a short distance north of my farm.

I'm one of those loathsome environmental activists that Mr McGuinty referred to. I was not an environmental activist when I moved to northern Ontario, and I don't consider myself to be one. I'm a citizen who became concerned with what was going on in northern Ontario.

The district of Timiskaming has been targeted, as Ms Lloyd stated, by a number of initiatives: We could have seen low-level nuclear waste, spent fuel and we had PCB facilities proposed. It's been ongoing. We've basically decided that someone has decided we are a sacrifice zone, since we are north of cottage country and north of Lake Temagami and we are in an area that doesn't have a lot of political clout. We seem to be targeted every three or four years by some new initiative.

Mr Bruce Crozier (Essex): You've got a pretty good member, our minister.

Mr Chudleigh: David Ramsey would take exception to that.

Mr Graves: He certainly would. David is a very close friend of mine and has certainly stepped forward on this particular issue.

I want to thank the committee for the opportunity to speak to you. I've worked for the same law firm in Timiskaming for 22 years. I am also vice-president of a risk management consulting firm that has among its clients the largest retailer and the largest ground transportation company in the country, so I have some knowledge of risk, and this was a very risky proposal.

I'm somewhat dismayed that two days of hearings are taking place in southern Ontario on a proposal that is certainly centred in northern Ontario, but I have grown used to that being the fact, having traveled down here many, many times over the last two or three decades to address committees such as yours.

On the issue of compensation, I would concur with Ms Lloyd: We believe it should be very limited. I personally am out of pocket over \$50,000. I know of people who are out of pocket a great deal more than that. I know of people on fixed incomes who showed up at every meeting, rally, gathering, and dug deep in their pockets to help finance a campaign to stop this project. Nobody is talking about compensation for anyone except the proponents, so I think it should be very limited.

Our concern was with groundwater and surface water contamination. We have lots of holes in northern Ontario.

We decided 15 years ago that if one was secured by the city of Toronto to put its waste in, there would be another and another, and we would be looking at the spread of contamination in groundwater throughout much of north-eastern Ontario.

I should tell you that the highest point in Ontario is in the district of Timiskaming, in the southwest corner of the district. It's called Ishpatina Ridge. This particular site, the Adams mine site, is in a very high ridge in the northeast corner of the district. The top of the ridge is about 600 feet over the elevation of Lake Timiskaming, which is the headwater of the Ottawa River. So all water flowing from that site would ultimately wind up in the Ottawa River surface water. We're very concerned about groundwater.

Mr Gordon McGuinty spoke this morning about willing hosts, but he failed to tell you that in fact the site is not in any of those communities. It's in the unorganized township of Boston. People in Boston township certainly did not want the Adams mine. They had no voice in it, however. The so-called supporting communities were some miles away. If enough goodies are tossed toward small-town northern Ontario councils, those councils will look favourably on just about anything that creates jobs and brings some money into the area.

The little clay belt area, which is downstream from the Adams mine site, or this ridge on which it sits, is a dairy farming area of \$200 million annually. I think John Vanthof—I saw him walk in—is going to address you later today. John is a farmer in that area and the president of the Timiskaming Federation of Agriculture. Some 40 million litres of milk are produced per year in that district and about 160 million litres of water are used to produce that milk.

Our wells are tapped into the same groundwater that the Adams mine is tapped into. That is what the concern is. We have an area of very shallow overburden on this particular ridge. An enormous number of springs emerge from this ridge. You can find water coming out. About every 150 metres that you walk around on that ridge, you'll find another spring that emerges. That is basically a very fractious site. It was blasted for over 25 years. It has some major fault lines in it. On reflection, it seems to be a totally inappropriate site to even consider using for solid waste disposal.

The mine is 600 feet deep into this ridge, which is the height of about a 55-storey building. So it's not insignificant. You have the photographs in front of you that illustrate the size of it. I don't think the photographs do it justice. You literally have to stand there to see it. It doesn't look like a bomb site to me. It does not look like a bomb site to the people who drive off the highway to come and visit this site.

In October 1990, I received a telephone call from Gordon McGuinty requesting a meeting. We followed that up with other meetings and we began speaking to people in the small Quebec town of Bristol who had been through a similar proposal by the same developer. They would not talk a great deal because they were subject to

lawsuits and so did not want to be involved in discussing the issue as it unfolded in their town. I met with Metro Chairman Tonks at that time, Toronto councillor Joan King, who was very much a proponent of the proposal, and public works commissioner Bob Ferguson, and we expressed our concern. The Bob Rae government, of course, passed legislation that prevented this from moving ahead.

In June 1991, I was involved in a trial in Toronto with the head of our firm and one evening we decided to go to Bigliardi's on Church Street for dinner. We were seated at the back. We had with us an articling student, the son of the head of the firm, and another individual. About five or 10 minutes after we were seated, another party was seated at a very large table behind us. That party included Joan King; Bob Ferguson, commissioner of public works; then-mayor of Kirkland Lake Joe Mavrinac; the developer Gordon McGuinty, whom you met this morning; Michael Harris, then-leader of the Tory party; and Peter Minogue, who is a good friend of Mr McGuinty and was chair of SuperBuild during Mr Harris's time in power—most infamous, I guess, for a golf course issue in North Bay, if you read the papers.

Mr Harris, at that meeting—and it was a very loud affair—stated that it was not a question of allowing the Adams mine to proceed; it was a question of making it happen. As recently as last June Mr Harris was photographed entering a meeting of the shareholders of the Adams mine project at Mario Cortellucci's facilities in Vaughan, and I'm sure Mr Harris has the right to go into any meeting he wishes, as a now citizen of the province.

Mr Harris was elected in 1995. Within 10 days of being elected, intervener funding was cancelled in this province, which meant that organizations such as ours had no ability to hire experts, or we had to do enormous fundraising to hire experts to support our positions or to give us their professional opinions at hearings. Dramatic changes followed in the EA act shortly thereafter, which allowed for scoped hearings, severely restrictive deadlines and essentially ministerial discretion in all aspects of the hearings.

The Halton landfill proceeded; it took about 180 days. As Ms Lloyd said, we had 15 days of hearings, a severely restrictive deadline. Hearings were held in March and April of 1998. The decision was rendered on June 19, 1998, and we were, again, only allowed to discuss hydraulic containment.

Interestingly, although the Adams mine had been a significant candidate for Toronto waste for a number of years, the proponents did not file their EA documentation with the MOE until December 1996, a few weeks after the act was amended and these restrictions were put on it. It's also interesting that MOE, at the hearings, supported the application despite the fact that their minister dictated the terms of reference and their director of approvals branch had the final right of approval, as it turns out, in this process. So there was some discussion by Mr McGuinty about there being no political interference and

voicing his support for how MOE proceeded. I'm sure he did feel that they were very close on this one.

Hydraulic containment basically suggests that the pit you see in front of them will have all water in the surrounding rock structures go into the site. Nothing goes away from the site. Nothing goes out the bottom. Nothing goes out the sides. Everything is incoming, and that's the principle that they relied on at this particular site.

Miners described a huge inflow in that pit, particularly at the bottom. There are in the minds of many, including the fellow who was the government geologist, Dr Larry Jensen, two water tables that are being dealt with. The one that the proponents like to talk about is in the upper 300 feet or so of the site. Others have spoken of the continental water table, which is what seemed to be infiltrating at the bottom of the site.

If you accept, as the minister did, that there is only one issue, it is that the hydraulic containment can be maintained over the contaminating lifespan of the project—1,000 years. That's 1,000 years of contaminating lifespan for 20 years' worth of Toronto garbage. The panel consisted of three individuals and, as Brennain said, one of them outright said, "This is not going to work," and that was the end of his involvement. Two gave qualified approval with 26 conditions.

In 1995 a deep, angled borehole had been drilled into the site beneath the pit, and it showed some anomalies. It basically showed that there were questions as to whether hydraulic containment was going to work, but it was not definitive. One of the conditions imposed by the panel was to drill two further boreholes to prove that hydraulic containment would work. They proved that it would fail. So some accommodation had to be found to allow this project to continue. Essentially the proponent's experts did some computer modelling and came to the conclusion, based on the computer modelling, that once leachate and garbage began to fill the pit, the water levels would rise in those boreholes and they would be able to accommodate the hydraulic containment. It seemed very flimsy to us, and certainly was controversial at the hearings. From the first borehole test, it was controversial.

The panel ordered the two further boreholes and stated that landfilling could not proceed until the director evaluated the results of the tests and determined without reservation that the recorded groundwater levels would sustain hydraulic containment. The boreholes showed exactly the opposite, as I said. The pressures were low, and there was a problem. However, MOE allowed the computer modelling. I'm trying to paraphrase this so I don't cover any of the stuff that Ms Lloyd has covered.

Last year, the Timiskaming Federation of Agriculture—and John Vanthof is here; I will not go deeply into the report that was commissioned, for which we contributed funds. Essentially, Dr Howard said head data from the two new boreholes must have sent shock waves through the proponents' camp. That's how critical the information was, and how bad it was for the proponents' position. It must have sent shock waves.

As you are all aware, some breakdown in the contract took place in the year 2000. There were lots of other things that took place that year: There were blockades; there was considerable disruption in Toronto council meetings. Mr Prue was there for that.

One of the things that really concerned us a great deal was what the basis was for the comfort of the director in granting approvals, considering the findings of those two boreholes. We were pursuing that material, and we weren't getting an answer out of the MOE. A number of people tried.

Then a publisher of a local magazine that comes out of Cobalt, Ontario—read it if you have an opportunity; it's called *HighGrader*—did receive a document from the ministry. I'll just read you a paragraph of this article. The headline is, "MOE Knew in 1998 It Couldn't Prove Safety of Adams Mine":

"The Ontario Ministry of Environment was aware in 1998 that the safety of the Adams mine couldn't be verified. According to documents obtained by *HighGrader Magazine*, the MOE chose to flag ahead the most controversial dump project in Canadian history based on models which could not be verified in the field.

"The 'Zaltsberg Memorandum,'" which was prepared by a government hydrogeologist, "was used by the MOE to justify providing a permit to the Adams mine proponents. But the memo by MOE hydrogeologist E. Zaltsberg admits that the entire premise was based on computer modelling which could not be verified.

"'However'"—and this is a quote from the report—"it is necessary to point out that this confirmation is derived exclusively from the modelling results. The model applied is based on several assumptions which cannot be verified in the field...."

As you've gathered, I'm speaking in favour of the act. Many of us would like to get on with our lives. We have contributed money and time away from our children and our families, and we believe that this bill is the best thing we can get.

We do not believe that the developer should be receiving a large amount of money for his effort. He invested in something; he had others invest in a project, and the project is not proceeding. As has been previously stated, that's the risk of doing of business. We would not support a large financial gain resulting.

Thank you very much.

The Chair: Thank you, Mr Graves. You've completely exhausted your time. I have no opportunity for questions from the committee, but thank you very much for your delegation.

I would stand this committee adjourned. The standing committee will be adjourning for lunch. We'll be resuming back at 1 o'clock.

The committee recessed from 1150 to 1307.

The Chair: I'm going to call the meeting to order.

Interjection.

The Chair: Just a minute, Mr Flynn. I want to make a quick comment. Earlier in the morning we had a couple of delegations—at least one for sure—speak about the

location of the hearing. I just wanted to reiterate what I said yesterday, at the beginning of the hearing. I think everybody on this committee did want to go to Kirkland Lake, or up north, to have the hearings. This was a decision of the three party House leaders. They came to the decision that here and Windsor were the locations for the hearings—just for the record.

Mr Flynn, you had a comment?

Mr Flynn: Yes, based on some of the comments I've heard this morning, I thought that it may be advantageous for all members of the committee to have the same information. I was going to ask if the research staff would provide us any agreements that exist between municipalities and the Ministry of the Environment or previous governments as to the allocation of landfill capacity from neighbouring municipalities or at the order of the Minister of the Environment. If there's something out there, I want to know about it. I think we should all know about it.

The Chair: OK.

Mr Prue: If I could, in that same vein, one of the people today—I think it was Joyce Savoline—said that there are at least three municipalities that forbid the burying of garbage or processing of garbage within their municipality. I would like to know how many municipalities of the 480 or so in Ontario have that, because that could create enormous problems.

The Chair: OK. Those requests have been noted. We'll begin with our schedule.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair: Our first delegate is Mr Lindgren. I believe you represent the Canadian Environmental Law Association. Is that right?

Mr Richard Lindgren: That's correct, Madam Chair.

The Chair: You have 20 minutes. If you wouldn't mind, at the beginning of your deputation, please give your name and the organization you represent.

Mr Lindgren: Certainly. My name is Richard Lindgren. I'm a staff lawyer at the Canadian Environmental Law Association, or CELA for short. I'd like to thank the committee for this opportunity to speak to Bill 49, and I'd like to be clear at the outset that we will be speaking in support of Bill 49.

Most of the committee members will know that CELA is a public interest law group. We've been around since 1970. We've been involved in many, many landfill cases, incineration cases, all kinds of waste disposal sites over the past 30 years.

I should also mention that I was the CELA lawyer who represented the Adams Mine Intervention Coalition at the environmental assessment hearing on the Adams mine landfill. I guess that means I sat through every day of evidence at that hearing. I cross-examined on that evidence. I presented my own evidence. I've toured the Adams mine site. I've been down the south pit, not to the

bottom but only to where the water's edge reaches, which is about 300 feet.

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In any event, based on our involvement in that hearing, it should come as no surprise that we are in support of Bill 49. In our view, Bill 49 makes sense from a policy perspective. We also believe that there are sound technical reasons to support Bill 49. We're also of the view that there are legal reasons to pass this legislation. Those reasons are what I want to speak to and explain in my presentation this afternoon.

Turning first to the policy reasons to support Bill 49, I would simply begin by observing that it's always open to the Legislature, as a matter of policy, to declare what locations or what sites are off limits to landfilling. That's not a new idea. It has been done before. I refer in my written submission to the 1994 amendment to the Environmental Protection Act, which basically prohibited new or expanded landfills within the Niagara Escarpment plan area. So this isn't the first time that the Legislature has stepped in and said, as a matter of policy, "These kinds of sites aren't approvable. Don't even go there."

That's beside the whole technical debate about whether a site is safe or whether it can be properly engineered. It doesn't matter. As a matter of public policy, if we wanted to declare certain areas off limits, then say so. Just say no. That's what Bill 49 does. It just says no to the Adams mine site and other types of water-filled locations because of the inherent risks to surface water and water quality.

That's why we say Bill 49 is justifiable on pure policy grounds. It's justifiable because, for example, it ends the debate over Adams mine once and for all, and it allows us to refocus our energy, our attention, our resources on a much more important question: How do we stop generating so much waste in the first place? Let's get serious about waste reduction. Let's set and achieve some aggressive waste reduction targets. That's what this bill allows us to refocus on.

As well, we take the view that mega-landfills, large-capacity landfills, are inconsistent with waste diversion. We've heard that a number of municipalities, including Toronto, are now embarking on some fairly ambitious waste diversion programs. The Ontario government itself has recently endorsed a waste diversion target of 60%. We can argue whether that's high enough or not high enough, but the fact is, you can't be serious about waste diversion and at the same time allow large-capacity landfills to continue. It's as simple as that.

Just finally, by way of policy justification for Bill 49, I would point out that the Ontario government has also endorsed the whole notion of drinking water source protection. You'll recall that Mr Justice O'Connor at the Walkerton inquiry said that we should try to identify and protect sources of drinking water and prevent contaminations from ever reaching those sources. That's why I say to you, Bill 49 is consistent with that overall policy objective as well.

But I would go on to say that our support of Bill 49 isn't just premised on policy; it's also based on technical concerns, technical issues that arise from the proposal to landfill at the Adams mine site.

Let me pause here for a moment. I would like to dispel the myth that the Adams mine site went through a full environmental assessment hearing. I was at that hearing. I can tell you, it was not a full hearing. It was restricted to one issue. I'll speak to that in a moment.

The bottom line is, some very significant environmental issues weren't even on the table. That's because of the scoped nature of the hearing referral from the minister to the board. That means that really important issues like surface water, landfill gas, waste transportation, the details of financial assurance—none of that was on the table. No evidence was called on that. The board had no jurisdiction to deal with it. So when people tell you or suggest to you that there was in fact a full environmental assessment hearing, that is not true.

What the environmental assessment board heard was one technical issue, and that was whether or not the proposed hydraulic trap design was going to work as predicted over the 1,000-year contaminating lifespan of the site. That's the only issue that was on the table.

I guess I'd be remiss if I didn't remark on the fact that that's a pretty big issue. We're talking about a landfill site with extremely long-term potential to cause contamination. In fact, 1,000 years was said to be the contaminating lifespan of that site. We spent a grand total of 15 days at hearings arguing about a site that could generate impacts for a millennium. My mind still boggles about that.

To make a long story short, the experts at the environmental assessment hearing couldn't agree among themselves whether this design was going to work over 1,000 years. That's not unusual—experts disagree all the time—but the board members themselves couldn't agree. If you've had the opportunity to read the Environmental Assessment Board decision, you'll know that there was a split decision; the board members themselves couldn't agree that the site design was going to work for 1,000 years. That is actually pretty rare for the board to do. The board generally does not issue dissenting opinions. I say to this committee, the fact that the experts and the board members themselves couldn't agree on the safety of the design is significant. That, to my mind, raises a serious and continuing red flag about the viability of this site.

In terms of the legal reasons to support Bill 49, I would simply say that we support the idea that the Environmental Protection Act itself should be amended so as to preclude or prohibit these kinds of sites at these kinds of locations. In our view, it makes no sense to allow a proponent to start an environmental assessment process or to go through the Environmental Protection Act process, go all the way down, and at the end of the day identify a flooded pit or flooded quarry as the preferred site. That just should be ruled off the table. "No means no; don't even go there. Look at other options or

alternatives. Don't come to us with a flooded pit as a solution to waste management issues."

In a nutshell, those are the policy reasons, the technical reasons, the legal reasons to support Bill 49. If you have occasion perhaps over the long weekend to look at my brief—I don't recommend that you do, but if you do—you'll see that we support the bill but we raise two technical or legal drafting issues that we think warrant some further consideration before the bill is passed.

The first technical issue has to do with the definition of "lake." It's pretty clear to us that the definition of "lake" captures man-made bodies of water greater than one hectare in size—and that's a good thing—but it's less clear to me that the definition actually protects natural lakes. The definition says "lake includes" and then it provides the technical definition of a man-made lake, but it doesn't include on its face whether it also captures natural lakes, rivers, streams, ponds and so forth. I'm not sure if that was an oversight or if it was deliberate, but I would suggest to you that if the intent of Bill 49 is to prohibit landfilling at lakes, both artificial and man-made, then the definition of "lake" needs to be reconsidered and broadened to make it abundantly clear that "lake" means a natural lake or an artificial lake or body of water.

The second drafting issue is the prohibition in Bill 49 against putting any part of a waste disposal site in a lake. Again, in theory and in conceptual terms that makes sense, but when we're talking about landfills there are many different parts of a landfill. There is the actual fill area, where the garbage gets disposed and presumably covered over a period of time, but then there are berms, access roads, leachate collection systems, gas collection systems, contaminate attenuation zones that extend beyond the landfill boundary, and it's not clear to me that those other parts are also caught by the prohibition in Bill 49. I think we would look for some greater drafting certainty to make it clear when Bill 49 prohibits parts of landfills in lakes, we're talking about all necessary components or parts of a landfill and not just the fill area. That's important.

Those are the only two technical drafting issues we have with Bill 49. We think, overall, Bill 49 is the right thing to do. We commend the government for moving forward with this legislation. It makes policy sense, there is a legal justification and technical justification for this bill, and that's why we urge the Legislature to enact the bill as soon as possible.

With that, I'll conclude my presentation. I thank the committee members for their attention and, if we have time, I would be happy to take questions.

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The Chair: Mr Barrett, did you have any questions of this delegation?

Mr Barrett: Just briefly, you propose now focusing on waste reduction. The province of Ontario has stepped into this issue, obviously, with Bill 49. Do you feel there's any need to look for additional landfill sites or expanded sites, or will recycling cover that?

Mr Lindgren: It depends on how quickly we can get to zero. I think most people, if they're realistic, will say, "We can't go to zero overnight or even tomorrow." So at least in the short term there'll be a need to make sure there is some landfill capacity, not at sites like this, but some landfill capacity to deal with the residual, the things that you just can't recycle, reduce or reuse. There is a consensus in the environmental community that in the short term there will be a need for some residual landfill capacity. But having said that, that's why we need to take mega-landfills off the table. If the objective is to reduce as much waste as possible and divert it from landfill, then the way we get at that isn't to approve more mega-landfills; it's to get serious about waste reduction.

Mr Barrett: There's one mega-landfill near Detroit that may be taken off the table. Will that influence the future direction you're recommending?

Mr Lindgren: Not at all. In fact, that might expedite long-overdue interest in recycling, reduction and reuse in this province. That would certainly be a catalyst to get serious about it and not just talk about it.

Mr Barrett: I guess a concern is, where do the million tonnes go in the ensuing year?

Mr Lindgren: That's why I said the bill is supportable for policy reasons. It gets us off that question of, "Where do we put it?"; it puts it more on to the question of, "How do we stop generating it?"

I would simply say to you that if the border closes—there's no indication that it will. I'm not an expert in American constitutional law, but I'm told there are certain limits on Michigan's ability to enact and enforce a complete prohibition at the border. But leaving that aside, if there is some sort of significant restriction at the border, for whatever reason, the Minister of the Environment has sufficient regulatory authority under the Environmental Protection Act to make sure that the waste that was going to Michigan goes somewhere else that's safe and sound. There are things like emergency approvals. There are minister's reports that can redirect or reallocate waste to other landfills. So there are tools available to deal with that issue. It doesn't mean we have to approve the Adams mine landfill.

The Chair: Are you done?

Mr Barrett: Just for the record, I might have said "a million"; it's 100 million tonnes per year.

The Chair: Mr Crozier?

Mr Crozier: Just a clarification of the word "lake": When you were speaking of the need to look at that definition, you said, "man-made or artificial." I would have thought those were the same and that it would be "man-made, artificial or natural."

Mr Lindgren: Yes, and that's what we're getting at. If you have an opportunity to look at our brief, we actually give a suggested definition for the word "lake." Maybe I misspoke myself. What I wanted to say was that it should capture both artificial and natural bodies of water.

Mr Crozier: Thank you.

Mr Prue: I think we all share your position that we should try to produce no garbage. In the end, everything

should be recycled or reused. But in the interim, we're going to have to put it somewhere, which has been asked. In your mind, is there any safe technology for getting rid of the garbage other than burying it? I have to tell you, I find that offensive, to bury the garbage.

Mr Lindgren: What you're asking people to do when you give them that choice is to pick their poison: "Do you want to burn it or do you want to bury it?" Neither one is acceptable. That's not the path to go down. That's just the wrong question. It's not garbage that needs to be gotten rid of; it's a collection of valuable resources that needs to be systematically collected, separated and recovered in some fashion. So let's not get fixated on disposal techniques or new or innovative practices for getting rid of waste volumes; we need to get serious about not putting it into the waste stream in the first place.

Mr Prue: I can agree with that. We should be source-separating it by hand, if necessary. It would provide a lot of jobs. But in your mind, is there any safe technology to get rid of it, other than burying it?

Mr Lindgren: If by "safe" you mean one that has no attendant risks to public health or safety or to the environment, I would say no.

Mr Prue: Thank you.

The Chair: Mr Hardeman, did you have a question?

Mr Hardeman: Just very quickly: I was reading the brief. Regardless of the debate over whether the Adams mine site is safe, it is clearly open to the Legislature to do it as a matter of public policy. I would agree with that. But in your presentation you also said that we shouldn't be looking at putting it in a lake; we should immediately take that off the table so people don't spend all their resources and time and effort looking at that option and then finding out they can't do it in the end.

I think that's really the problem I see with this act. It's a good way to deal with public policy for the future but I see it as inappropriate to do that for the past, to say someone has gone through the process that all other landfills have gone through to be sited and then we're going to pass a law that stops you but doesn't stop everyone else. From a legal perspective, don't you have a problem with that?

Mr Lindgren: No, I don't, and I'll explain why. Law is not cast in stone; legislation is not cast in stone. It changes from time to time to reflect social values and social priorities, and that's what's happening in this case. We no longer believe, as an Ontario society, that it is acceptable to put waste in water-filled locations like the Adams mine. So to my mind, there's nothing wrong in law with the Legislature going ahead and amending the Environmental Protection Act in a way that prohibits this kind of stuff from happening. To the extent that someone may have received some prior approvals but not all the approvals necessary to go forward, I say to you that's the way it is. When the Legislature makes a decision as a matter of policy that these things no longer meet current standards, then unless it's already built and underway, you're going to have to meet the current standards. You shouldn't get out of them.

Mr Hardeman: I guess you kind of missed my question, or maybe I didn't express it properly. The minister also has the ability to ask and order a further hearing and more hearings because it no longer would meet the parameters of that. So if you passed a law that says you can't put it in a lake, and there's going to be a new hearing on the application that's before us now, it would automatically, I suppose, under those circumstances, no longer fit public policy. But doesn't it make more sense to have the rehearing, if the evidence is that, as you've presented it, from a technical point of view, this wasn't a good site? Why wouldn't we give the applicant the opportunity to have his say?

Mr Lindgren: Again if, as a matter of public policy, the Legislature decides it's not a good idea, period, to put sites in locations like this, why bother having a rehearing? Why go through another costly, controversial hearing on a site that doesn't come up to snuff, doesn't meet current standards? Why go down that road at all? That's why I say rehearing isn't an option in this case.

The Chair: We're out of time, Mr Lindgren. Thank you for your delegation. We appreciate your coming here today. We learned a lot from your delegation.

Mr Lindgren: Thank you.

The Chair: We had a spirited debate.

CITIZENS' NETWORK ON WASTE MANAGEMENT

The Chair: Our next delegation is Mr Jackson, Citizens' Network on Waste Management. Welcome. You have 20 minutes, and if you could introduce yourself and the name of your organization before you begin.

Mr John Jackson: I'm John Jackson. I'm the coordinator of the Citizens' Network on Waste Management. This is a coalition that has been in existence for about 25 years, working on waste issues with grassroots organizations around the province as they encounter problems with landfills, incineration, trying to get recycling programs going etc.

In terms of the bill in front of you, we support this bill and we're really pleased to see that it has come forward and is before the Legislature. The fact of the Adams mine on its own would be enough reason to say that the bill has to pass because, as you've heard from people this morning and will hear from people who speak after me, that was just a disastrous proposal.

But what I want to speak to is a few reasons, for people who were not involved in that issue directly, why it is also important to all the other people in the province beyond the people specifically on the Adams mine issue.

The first is that, as we just pointed out to you, it is not acceptable to be putting garbage into places that already have water that flows into them. We come up with all different kinds of engineering schemes—fancy liners, fancy pumping systems—to try to solve these problems and then go through lengthy, expensive hearings on those. But the reality is those sorts of engineering sys-

tems may work at a beginning stage but will inevitably eventually break down.

The United States Environmental Protection Agency has clearly said that, of all the testing they've done and efforts at pumping systems and liner systems, within a maximum of 15 years, the systems start to fall apart. With the weight of the garbage, the filling in of the system and everything else, it just collapses.

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Speaking of the long term, there's no point in wasting our time looking at these kinds of systems. We must keep garbage away from areas that water naturally flows into.

That provision in the bill is absolutely critical. I think you need to look again at the exact definition of "lake" and all those kinds of things, as has been pointed out to you already. But the principle must be there and must be carried through.

One reason why it's also critically important: We heard from the perspective of saving proponents from going through this. But even more critical is saving community after community in this province from going through the incredible sacrifices that citizens make, as they organize to fight proposals they know are bad for their community and bad for the environment, incredible sacrifices that people make to get through those proposals, proposals that are outrageous. We need to be spending our energy as citizens' groups on proposals that may have validity to them and not wasting our time on ones that are clearly bad from the beginning. That's one reason why this piece of legislation is critical, far beyond the Adams mine issue to the situation for the future for citizens' groups all across the province.

Another reason why it is critical to all of us is to push forward an agenda in Ontario to divert waste from disposal. Our definition in Ontario for disposal, a really important definition, is both landfill and incineration.

The province is putting higher targets on it. It's coming out with a discussion paper on how we can improve diversion. We're really pleased to see that happening and certainly will be fully engaged. We're confident that we'll find, when we go into that in detail, that a 60% target is only an interim, beginning target—composting would get us there—and that we can go well beyond the 60% when we look seriously at the options for how to proceed.

Let me give you an example from my personal experience of why the presence of the Adams mine works against our moving forward with diversion in a really serious way. I was on the rethinking garbage sub-panel of the Central Ontario Smart Growth Panel. That panel was mainly made up—I was the exception—of senior government people within the GTA. Some of them were regional chairs, some were heads of public works departments. The discussion there kept saying two things. First of all, "We don't want to keep exporting garbage to the United States." But the second thing they always then said was, "And Adams mine is there. There's an approval there," and you've heard today the limitations in that approval, but always looking at that as the out. We'd sit there at the

sub-panel. We'd say, "But diversion: Let's get something serious in there about diversion." They'd say, "Oh, that's long term. That's way off in the future. Of course we all support diversion." But what they were all focused on was, "Could we get that Adams mine thing rolling again to really take care of our garbage problem?"

So its presence there was something that kept people from talking seriously about how to get the diversion program going. Taking that off the table will create a major impetus to get every municipality in the province, as well as the provincial government itself, focused on maximizing diversion. So it's a second reason why it's critical for us.

The third reason is—and this isn't so directly staying on the bill, but to speak to a concern that I hear from municipalities all the time, which is that the border to the United States could close off or, just on principle, and I think it's a proper principle: "We don't support export." But let's look at what we mean by export. Isn't sending garbage to northern Ontario, shipping it away from the place where it was created, export too? We must apply that same principle to shipping garbage elsewhere. I was really pleased to hear the chair for Halton this morning saying, "We are going to take responsibility for our garbage. We expect others to take responsibility for their garbage." I think that's a proper principle that needs to be encouraged and that every municipality needs to be applying. Allowing Adams mine to be there, which clearly was not for local garbage—no way that was being built for local garbage—was accepting the principle that we don't have to take care of our own garbage.

The final thing I want to speak to is the compensation issue. I'm not going to go into compensation in terms of that particular aspect of the deal, but I must say for citizens' groups in Ontario, that whole principle of compensation there is particularly galling because we devote, as citizens, incredible amounts of volunteer time, time off work—losing pay—expenses in terms of doing research, hiring lawyers and getting consultants to help us to be able to seriously examine proposals. There's no discussion of compensation for the people who go through that. That's an incredible inequity in the system that the government really does need to look at addressing in the future as it looks at how we involve people in things like environmental assessment and how we involve people in decision-making.

It's always the unfortunate proponent, but even more unfortunate are the communities that are subjected to proposals that could disrupt and harm their community. Even if they win in terms of stopping the proposal, they still have lost a lot simply by what they had to put out to go through the proposal financially and in many other ways.

So again, we want to thank you for bringing forward the bill. We think it's absolutely critical, not just in terms of Adams mine, but in terms of the furthering of finding better ways to deal with municipal garbage in Ontario. We're pleased that there will be a discussion paper coming forward on diversion, and we certainly will be

reviewing that and helping make input into that and trying to make things proceed better.

Mr Mario G. Racco (Thornhill): Thank you for doing so much for us in getting involved, and that's volunteers all over the province in different areas too from what you're doing.

I was going to ask this question to the gentleman before you, but let me try it on you, if I can. I was born in an area where we didn't have garbage, on a small little farm where everything would be contained within. We never had garbage collection in the 17 years I was there, but in the big city we do have an issue. One of the things that I always admired in Europe is that they don't seem to have a garbage problem. They seem to deal with garbage without having the same problem that we're having in Canada. In Europe, there is a technology that could dispose of garbage instead of burying it—which I disagree with, in general—which is safe and within reason, economically speaking.

Mr Jackson: I think first of all, one of the things that's different in Europe, and we are beginning to explore here, but very preliminarily, is that in many ways they've taken the responsibility for dealing with garbage away from municipalities, not to a senior level of government, but to industry, to the people who make and sell the products. You'll find in many European countries that they've said the people who made and sold the products, not municipalities, are the ones responsible for taking them back. They're responsible for achieving certain reduction and recycling targets or composting targets and, therefore, it's up to them to find the solutions.

In terms of yes, there will always be some residual and, therefore, some need for disposal, we have to change and can change the nature of what is being disposed of. We have an example in Canada, in Halifax, where nothing goes directly to landfill. Even after they've done all the composting and recycling and so on, what's left over they actually put through what is like a composting process, except it won't give you quality compost, so you can't use it; so those materials that would break down and create the hazardous leachate have been taken off before it ever goes into the ground.

We need to be talking about changing the nature of what we dispose of so it doesn't create the threat to the environment, and therefore it can be a much more reasonably safe landfill. We are always looking for this magical black box, technical solution, when the real solution is to get the things out that will create the hazards when they get to the disposal stage, before we ever need to get to the technology.

Mr Racco: Where would you put it, though? You've got to put it somewhere. How do you dispose of it?

Mr Jackson: We'll have much smaller facilities if we get into that situation. The hazards of the facility would be much less, and then we'd have to do it in each of our own municipalities.

The Chair: Mr Prue, did you have any questions?

Mr Prue: No, I think not.

The Chair: OK. Any other speakers?

Mr Flynn: I did have a question, if there's some time. Just how achievable and realistic are the existing diversion targets for the city of Toronto, in your opinion?

Mr Jackson: I think they're very realistic. Working with their technical experts and with citizens' groups and so on, they have developed detailed plans for how to get to them. But to get there, the motivation has to be there to make sure that the budget money is put in to keep doing it. I think, again, the critical thing really needed from the provincial government is extended producer responsibility so the whole burden isn't placed on the municipality of the city of Toronto, as one example, to institute the programs they are recommending.

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Mr Flynn: We got a great chronology and some great information from a previous presenter, Ms Lloyd. I'm taking the information from there, so I'm sure it's accurate. Late last year they had a waste diversion target of 30% in 2003. It seemed that would be very low for a city in a state of crisis.

Mr Jackson: Yes, it definitely is, and it's really quite distressing. The focus on disposal options is one of the reasons they're so low. If some of those disposal options start disappearing, they will actually get more serious. Let me give you an example: Hamilton, not far from here—and they will admit it; they can't deny it; it's a fact—has had the lowest recycling rate in the province for years and years. Why? They had an incinerator. They had to close down the incinerator because of new provincial standards that came in a couple of years ago. They had to close it down because it was just getting too expensive to operate. Suddenly their recycling rate has almost tripled in two years. That's because that disposal option had disappeared on them. They had to get serious about diversion. It's a prime example.

Mr Hardeman: Thank you for the presentation. I wholeheartedly agree with you that the option is to reuse and recycle. My community in 1986 started the first mandatory recycling program in Ontario. In fact, in the first year of that program we were in excess of a 30% reduction. What was interesting about it, though, was that it was done by the people, not by the municipality.

On what we're talking about here today, we seem to be saying that if we just take away the municipalities' ability to dump their waste, somehow people at home will start recycling. If that's true—and I'm not suggesting it isn't—then should the garbage strike in Toronto not have gotten them to 100% recycling because the people had no way of getting rid of their waste? Shouldn't they immediately have turned to separating? It's a rhetorical question, because I know they need the education and the ability to get rid of it, but I want to point out that I think that just saying no to the Adams mine is not going to create the euphoria that you're talking about. I think we need to do much more than that. I'm not sure we need to pick on one individual's rights in order to facilitate what all of us need to be doing.

Mr Jackson: I'd say a couple of things. One is that individuals can't do it on their own and need to be given

options. They need to be given things. I can't return the bottles, for example, to the store when they're going to throw them back at me or throw them in the garbage the minute I turn my back because we don't have a deposit-return system. So the systems have to be there for people to use.

The thing about Adams mine, in terms of how it can motivate us to get serious about diversion programs, is that it is such a huge quantity of garbage that would have gone there. That's why it's so significant. You are totally right; this won't get us to the diversion. That's why I'm pleased that the province is talking about looking seriously at developing new diversion programs. That has to happen. This is only one important step in moving us there.

Mr Leal: I would like to thank Mr Jackson. You mentioned product stewardship in Europe as being vitally important. Do you know the cost that's built into that product for that stewardship, for European manufacturers?

Mr Jackson: It's interesting. I've seen very different studies on it. I've seen studies from some industries that say it's more expensive than large systems, but then I've seen other studies done by independent consultants that say it really isn't. I'm not convinced that the financial estimates we've been seeing, for example, from Corporations Supporting Recycling, CSR, are a fair reflection of the situation. One example is that we're told here that a deposit-return system would not be a good idea for the consumer because it ends up costing more and the cost always goes back to the consumer. But if you look at studies that have been done in Alberta, where they have a deposit-return system for all beverage containers except milk—I've seen studies done of the calculations—they find that it is actually costing less per unit to recover those materials than it is in Ontario. And they're getting an 80% to 90% recovery rate for things like glass bottles, aluminum cans etc. Here we're getting more like 50%, and maybe, in a really good situation, 60%.

The Chair: Thank you, Mr Jackson, for your delegation. We appreciate your coming out.

TIMISKAMING FEDERATION OF AGRICULTURE

The Chair: Our next delegation is John Vanthof, president of the Timiskaming Federation of Agriculture. Welcome. I understand you have a PowerPoint presentation. You have 20 minutes, and you could help Hansard by identifying yourself and your organization at the beginning, please.

Mr John Vanthof: My name is John Vanthof. I'm currently president of the Timiskaming Federation of Agriculture. I'd really like to thank the committee for allowing us to speak regarding this act today. While my colleague starts the computer, I would like to start by saying that I'm speaking today in favour of the act, but I'd like to qualify that by saying that we have some extreme reservations with the act itself.

We've been involved with this since 1995. How can I put this? We're proponents ourselves in another sector and it's crucial to us that all the ministry's decisions regarding approvals are based on scientific information. That's how we want to be treated. That's how all proponents should be treated. Based on our experience with this project, we think we can prove that that hasn't been done in this case, and Bill 49 ignores that. We find that's very crucial.

I believe earlier you heard that we'd commissioned a study by Dr Ken Howard. Because we had reservations about the way the ministry had approved the project, we went back to the site and actually measured the water, every second month for a year. The water isn't doing what the proponent predicted it should be doing and it isn't doing what the ministry had approved. That's when we contacted Dr Howard. The reason we picked Dr Howard is that we wanted to find the best guy we could, because we thought, face it, it might not be approved all the way, but the project is approved. So if just Joe Blow farmer, like me, comes and says, "Excuse me, there's a problem,"—and that's what we did and the ministry rebuffed us. So we went back to Dr Howard and asked him. We picked Dr Howard because he had the best qualifications we could find. Also, he was the first environmental witness at the Walkerton inquiry. He was also Justice O'Connor's personal adviser at the Walkerton inquiry. So we picked him and we were glad he wanted to do it, because we felt that at least they wouldn't say, "Well, they just hired a pro-agriculture guy who is going to say whatever agriculture wants." When he came back so scathing of the ministry, it scared us.

The Adams mine landfill project was first proposed in the late 1980s, as the former iron ore mine was being shut down. The original plan called for the use of three pits, with a combined capacity of 65 million tonnes of solid waste. The south pit in the foreground and the central pit just behind it were the main sites destined for the waste.

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The Timiskaming Federation of Agriculture represents 400 farmers in an area known as the little clay belt. The clay belt was actually an ancient glacial lake bottom. It's about 200,000 acres in size, and Lake Timiskaming is a remnant of that ancient lake. These photos represent some of the farm operations in the area. The agriculture sector in Timiskaming contributes over \$130 million annually to the area's economy in direct and indirect sales. Over 1,000 jobs are directly dependent on agriculture in the little clay belt.

The TFA first became involved in May 1995, when we lobbied for and were granted a seat on the public liaison committee struck by then-proponent Metro Toronto. Our mandate was to ensure that our farms would not be impacted by the controversial plan. Toronto pulled out in December 1995 and Notre Development revived the project in 1996. The company planned only to use the south pit. It continued with the EA process started by Toronto and the site was licensed by the Ministry of the Environ-

ment in 1998. It is currently licensed as a solid waste landfill. The licence is for 20 million tonnes of solid waste deposited over 20 years. It is about one kilometre long and 600 feet deep. The groundwater in the pit is currently about 300 feet deep. The main concern of the farmers of Timiskaming remains, "Could the proposed Adams mine landfill impact the groundwater on which we depend for our livelihoods?"

This map shows the geographic relationship between the Adams mine site and the little clay belt. At first glance, it would seem that the distance would be too great, but there are several possible important links. The Boston fault runs beside the pits and splits in two below the site. One branch runs into Round Lake, while the other disappears under the clay belt. Another geological feature: a diabase dike runs through the south pit and connects to the Boston fault.

Another potential link between the two sites is the Munroe esker. The esker, which is basically a huge sand and gravel formation left by the receding glacier, runs just east of the mine site and also disappears under the clay belt.

Adams mine is also the highest point in our region. As this shot shows, the terrain slopes rapidly away from the site. Water in our area flows from north to south; ie, from Adams to the clay belt.

The main surface drainage system for the area is the Blanche River system. A branch of the system runs along the mine site and the system eventually dumps into Lake Timiskaming. There is ample opportunity for leachate to travel to the little clay belt from the site. The real question is, will the site leak? This line shows the cracks in the sides of the south pit. These fractures are actually essential to the landfill design. Adams mine will rely on the hydraulic containment concept to contain leachate. Basically, groundwater flowing in will prevent leachate from flowing out. For hydraulic containment to work, the pressure of the water flowing in has to be higher than the pressure exerted by the leachate in the pit.

The approved plan has two phases. The pumping phase, where all the leachate will be pumped from the bottom of the pit to the treatment facility, will be used for the first 10% of the landfill's contaminated lifespan, estimated at 1,000 years. Gravity drainage will be used for the remaining 90% of the time. In this phase, leachate will be allowed to rise up to a perimeter drain circling the pit. The leachate will then flow by gravity down from the treatment facility. Gravity drainage is proposed because the Adams mine is situated on a ridge and it's obviously much more economical than pumping. The question is, why would leachate not flow in some of the cracks untreated before it reaches the perimeter drain?

To test for this possibility, the proponent drilled numerous wells around the site and one deep-angled borehole under the pit. The average pressure readings of the superhole were high enough to support the gravity drainage theory, although it was pointed out at the scoped EA hearing in March 1998 that one reading was too low and could indicate a leak. The EA board ruled that two

additional holes be drilled to investigate this low-pressure area. The two boreholes were drilled in the fall of 1998. Half the pressure measurements in drill hole 98-2 were too low, and all the measurements in drill hole 98-1 indicated that hydraulic containment could fail. Interestingly, borehole 98-1 intersected a rock formation called a diabase dike, which connects to the Boston fault.

The proponent countered that their computer modelling indicated the pressures in the cracks would rise with the water or, if the pit was turned into a landfill, as leachate in the pit rose. The project was approved based on these modelling predictions, although the actual measurements indicated that it might fail. The proponent's and MOE's contention is that the low-pressure areas are not connected to the regional groundwater system, but are closed-circuit systems that only flow in and out of the pit. Many others, including the TFA, remain doubtful.

The following scale model sequences will demonstrate our concerns.

This is a scale model of the regional groundwater system. The inner container represents the south pit; the water around it represents the saturated bedrock around the pit. There are holes drilled in the inner container to represent the cracks in the bedrock. These lines represent the angled boreholes and the pressure readings. The tube running out of the pit represents the Boston fault system. This system runs through the site, into Round Lake and branches out into the clay belt.

This is Round Lake. The two tubes represent the Blanche River system, which is the main surface drainage system in the area. It empties into Lake Timiskaming. The tank and pump on the far right are the weather system. Water is pumped back to the top of the model to maintain the groundwater level like rain does in nature. The model shows the topography of the area, especially that the Adams mine site is the highest point in the area. In real life, the bottom of the pit is about the same height as the level of Lake Timiskaming. With this model we can demonstrate hydraulic containment in both the pumping and gravity drainage phase of the landfill. The gravity drainage phase is the most problematic, because the leachate in the pit must rise far above the level of the regional groundwater table in order to reach the gravity drain. The plan calls for the leachate to run through this pipe and flow to the treatment system by gravity. This is the feature that makes the project feasible, since it is estimated that gravity drainage will be used for 90% of the contaminated lifespan of the site.

The farm represents the Little Claybelt. The farm is also built to scale. The silo is 60 feet higher in relation to the pit, which is 600 feet deep.

This sequence depicts the Adams mine in the gravity drainage phase. The pumps have been shut off and the pit is slowly filling with groundwater. If you look at the bottom of the pit, you can see the groundwater pushing through the pit floor. Water is also flowing through the cracks on the side. This is hydraulic containment. The water in the pit is rising close to the water level of Round Lake. Interestingly, the water level of Round Lake cor-

responds with the lowest pressure reading in borehole 98-1, which is displayed inside the model. As the leachate level in the pit continues to rise, everything looks fine. For gravity drainage to work, the leachate level in the pit has to rise far above the regional groundwater table.

If Adams Mine is connected to Round Lake or Little Claybelt through the Boston fault, leachate could run out of the pit before it gets to the gravity drain. Even if this happens, the groundwater right around the pit might not get contaminated, although Round Lake will be polluted. The higher the water level rises in the pit, the faster the water will flow out into the regional aquifer.

The proponents' claims that rising water levels in the pit prove the pit does not leak are false. The rising water levels might only indicate that water is flowing into the pit faster than it is flowing out. As the water continues to rise, it reaches the level of the gravity drain. Almost everything is working as planned. The leachate is flowing through the drain; the water around the pit is clean. The only problem is that Round Lake and the farmers' wells in the Little Claybelt are being destroyed.

The proponent had planned to pump the pit and start construction in 2000, but due to several factors, construction never started. The project began attracting attention again in 2002.

The TFA decided to begin a monitoring program of the pit water levels in order to be sure that the modelling on which the approval was based was accurate. Our modelling program consisted of bi-monthly checks over the period of one year of the water levels of the south pit. This was calculated with survey equipment and also recorded with photographs. Our monitoring program indicated the pit was static for long periods and that when it did rise, the rate of filling was much lower than predicted by the proponents' modelling. Our work also showed that the rate of rise was not impacted by varying amounts of rain flow.

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When we realized that the low pressure measurements in borehole 98-1 corresponded with the water level of Round Lake, and when the results of our monitoring program also indicated that Adams mine could be connected to the region of groundwater system and Round Lake, we contacted our respected hydrogeologist with previous experience with the project. He advised us to contact the Ministry of the Environment with our concerns.

We did contact the ministry, and their response left little doubt that our concerns would not be further investigated. In a letter to the TFA dated March 18, 2003, Mr James O'Mara, director of assessment and approvals branch of the MOE, replied: "On behalf of the community liaison committee established for this landfill project, the site owner's peer review consultant, Gartner Lee Ltd, agrees with the conclusion that hydraulic containment can be maintained during the pumping and gravity drainage phases of the landfill."

The MOE's response left us no alternative but to continue our own investigation. We contacted Dr Ken

Howard, a world-renowned groundwater consultant, and asked him if our concerns were valid. He agreed that they could be, and as a result, we commissioned him to conduct an independent review and critical analysis of the hydrogeological work done for the project.

We sent a letter to the Premier regarding our concerns. The last paragraph of the letter stated: "The TFA has commissioned a private-sector critical analysis of the proponent's work, and we will release the results once finalized. At that time, we will make a formal request to suspend the certificate of approval, based on the recommendations of this critical analysis."

When our letter to the Premier became public, the proponent, Adams Mine Rail Haul, launched legal action against the TFA. Adams Mine Rail Haul also launched an attack ad campaign against the TFA. These full-page ads appeared for five weeks in local newspapers.

In August 2003, Dr Howard completed his report. He was extremely critical of the ministry's actions regarding the project. The Environmental Assessment Board had ordered the director to approve the project only if he could do so without reservation. In Dr Howard's opinion, this ruling was, in effect, a stay of execution.

Dr Howard was especially critical of the ministry's review of the modelling. He stated, "Head data from the two new boreholes must have sent shock waves through the proponent's camp." The vast majority of heads were unexpectedly low and simply failed to confirm the strong inward gradients that had been implied previously by drill hole 95-12. Under the conditions of its agreement with the MOE, Golder had no choice but to invoke the use of numerical modelling tools in an attempt to show that the low groundwater heads deep in the aquifer would rise dramatically as the leachate level in the pit rose toward its final resting level of 325 metres above sea level.

I examined the Golder models in detail and found them all seriously deficient, notably with respect to calibration. In particular, the models developed to convince the director that heads in drill hole 98-1 and drill hole 98-2 would recover sufficiently to sustain hydraulic containment have virtually no scientific merit and are effectively worthless for predictive purposes. The outcome of these models was entirely predetermined by the models' unverified boundary conditions such that none of the data observed in any of the boreholes would have had the slightest bearing on the model result.

The director's decision was patently premature and scientifically unjustified. At the EA board hearing, Notre acknowledged that numerical models suffer from inherent uncertainties and indicated that no important decisions would be based on modelling predictions. The director, it appears, had no such qualms, making a crucial decision based on the findings of two seriously flawed models that his scientific advisers should have rejected without hesitation. I do not criticize Golder for presenting its client's data in the best possible light, but I do fault the Ministry of the Environment for failing to conduct a thorough scientific review of the modelling results.

Dr Howard made the following recommendations:

"On the basis of my work, I strongly believe that the certificate of approval for the Adams mine site should be suspended until such time as hydraulic containment can be demonstrated by field (not modelled) data. To provide the appropriate data, I recommend that:

"(1) One deep angled borehole be constructed on the south side of the pit where deep data are seriously lacking.

"(2) Westbay Multiport Systems (or similar) be installed in all four deep boreholes, thus allowing heads beneath the pit to be monitored at discrete intervals.

"(3) A pressure transducer (water level recorder) and data logger be installed in the pit lake.

"(4) A simple weather station be installed for the collection of meteorological data including daily precipitation and class 'A' pan evaporation.

"(5) A comprehensive monitoring program be established as follows: hourly measurements of lake water levels; daily measurements of precipitation and pan evaporation; monthly measurements of head in the Westbay Multiports, all for a minimum of three years or until such time as heads measured in the subsurface either consistently exceed 325 metres above sea level or demonstrate rates of recovery that show, with a high degree of statistical certainty, that a level of 325 metres above sea level would be exceeded by the time the lake recovers to 325 metres above sea level.

"If this program of work were implemented immediately, and the pit lake water level were allowed to recover naturally with no disturbance, the issue of hydraulic containment could be resolved with a high level of confidence within a matter of three to five years."

The proponent refuted these recommendations, especially since he had just reapplied for a take-water permit in order to drain the pit to start construction of the landfill. The conditions attached to the draft take-water permit issued by the ministry seem to reflect Dr Howard's concerns, but the proposed testing program was only five weeks instead of five years. Furthermore, Rob Campbell of the MOE stated that the pit could even be adequately tested after pumping.

Dr Howard's response to the MOE's position was unequivocal. In a letter to the TFA dated December 11, 2003, he replied, "The level of scientific ignorance demonstrated by the Ontario Ministry of the Environment with regard to this matter never ceases to amaze me."

Madam Chair, I feel I'm going over time. We're going to make this tape very public. We have no choice, because I'm still being sued for \$10 million by the proponent. Bill 49 saves the government harmless from lawsuits, but it doesn't save me. So some day we're going to end up in court, and maybe that's where the truth is going to come out. I support Bill 49, because it's probably going to stop the landfill. But the problem here is there were mistakes made. I'm not saying that; one of the most respected water experts in the country—in the world—is saying that. The ministry promised to meet with him before proceeding, and instead of that we got

Bill 49. The TFA is left with a \$100,000 bill for Dr Howard. I am left with a \$10-million lawsuit.

I know I'm over my 20 minutes, and there's another five or 10 minutes to this. But this is going to make a great movie some day, and that's a shame, because with Bill 49, we're not learning the lessons that should be learned. Something went wrong here, drastically wrong.

I've got a letter here from Mr McGuinty's lawyer. I've spent \$1,000 coming here, and quite frankly, you're not going to stop me now. This is from Mr McGuinty's lawyer: "The statements made by Mr Vanthof are the types of statements which have resulted in the introduction of the Adams Mine Lake Act to the Legislature." If that's true, then something is very, very wrong in the MOE, or somewhere. I'm just a dairy farmer—proud to be one—but I'm just a dairy farmer, and if something I say can stop the project after it's been reviewed by all these "experts"—what happened here is that I'm just a dairy farmer, and somehow, by the luck of the draw, I found Ken Howard and Ken Howard put the brakes on. But instead of finding out what went wrong, we're just hiding it.

I'm not saying we're hiding it, but as a proponent in another sector, how can I trust the MOE, and quite frankly the government, with nutrient management, to make qualified scientific decisions when they're avoiding problems in other areas? I'm personally very much against the Adams mine and I think if we tried to prove it, it would fail, and I personally think the people in the MOE know that. But it shouldn't be up to people like me to raise the bucks to find the best experts in the country. That's supposed to be up to the MOE. When I started in 1995 on the Adams mine public liaison committee, I thought, "The farmers put me in there. The MOE is involved. I don't really like the dump much but, hey, if it's safe—" I don't want 10 people to be able to stand at the end of my road and stop me from building my barn if I can prove it's safe.

I don't like Mr McGuinty much, but I think he has the same right, too. But there's a problem here, and we're avoiding the problem. I sure hope this doesn't stop Bill 49. Mr McGuinty might be friendly to you, but he plays hardball. This is the ad—five weeks. What are you supposed to say to your kid when she comes home—she's in grade 3—and says, "Dad, why are you a liar?" I say, "What do you mean?" "Well, it says so in the paper." And now we'll never find out because Bill 49—Dr Howard's recommendations, Dr Howard's scathing comments on the ministry, will probably never be discussed again.

Maybe we need Bill 49, but what we need here is a full public inquiry so that this doesn't happen again. The way we're doing it now, what's going to happen is we're going to talk about recycling, we're going to talk about all these things, and what we're really doing is looking for some other poor community that might not have a \$140-million agricultural industry and might not have that chance.

Thank you very much for allowing me to go overtime and to spout off.

The Chair: Well, you obviously have an important message to bring us.

Mr Leal: Can I get a copy of Dr Howard's report? Is that possible?

Mr Vanthof: Yes, you can have a copy of the CD and I've got three copies of the condensed version of the report. If you give me your name, I could—

Mr Leal: Could it be given to the Chair and circulated to the committee?

Mr Vanthof: Yes.

The Chair: Yes, I think everybody on the committee would likely want to have a copy. It's very compelling. It will make an interesting movie.

Mr Hardeman: I want to thank the presenter for a job well done in putting this forward. This is the first time I've seen this part of the report, but I've heard about the Adams mine a number of times since 1995, since the next generation of Hardemans started into this process.

Just for the information of the committee, John is my nephew. He's a very productive and industrious dairy farmer in the area. In fact, I believe I live in the house that John was born in. I do want to thank him personally for coming forward and putting up all that money to come here and present his case for the committee. Thank you, John.

Mr Vanthof: Thanks, Uncle Ernie.

The Chair: Thank you, Mr Vanthof. We really do appreciate your coming. We realize how distressing this has been for you and we appreciate your coming before the standing committee to give your thoughts. I assure you this committee and its representatives will look at your presentation and talk with staff about it.

Mr Vanthof: Thanks very much.

Mr Barrett: On a point of order, Chair: Given that a decision was made not to have a day in the north, I understand on certain other committees people have been able to submit expenses where they've had to travel down to the Toronto area to testify. I don't know whether this was explored in the subcommittee, but as I recall there is a precedent where people have been able to submit travel expenses to come down to Toronto to testify.

The Chair: In my limited experience as Chair of this committee, I believe I have seen requests come forward and they can go to the subcommittee. So there's nothing to prevent someone from submitting their expenses, and they will be reviewed by the subcommittee. There is nothing to prevent people from putting forward a request. The subcommittee would review it. That would be my answer.

Mr Barrett: I see. Could that be communicated to certain witnesses who have dropped \$1,000 to come here?

The Chair: I'll ask the clerk's department to do that.

Mr Hardeman: Madam Chair, it was either in this committee or another committee where I already filled out a questionnaire as to an individual who wanted to make a presentation in Windsor and asked for reimburse-

ment. We were asked, as committee members, to circle and sign as to our recommendations whether they should or shouldn't. I know at that point, I signed it. I thought they should be. It was not in this case, but this was for an individual coming from northern Ontario having to go to Windsor to be heard. So I would hope that would carry through into this case too.

The Chair: Your comments have been noted.

1410

TOWNSHIP OF ARMSTRONG

The Chair: Our next delegation is the township of Armstrong. Pierre Bélanger is the speaker, I believe. Welcome. Thank you for coming, and if you would help Hansard by indicating your name and the organization you speak for. You're speaking for the township, I believe?

Mr Pierre Bélanger: Yes, I am.

The Chair: You have 20 minutes.

Mr Bélanger: My name is Pierre Bélanger. I'm a long-time resident of the township of Armstrong, also known as Earlton. This is in the vicinity of the Adams mine and one of the communities that led the battle against this. We wish to commend the Ontario government for this bold and forceful legislation which puts an end to an unrelenting assault on the Timiskaming watershed, the source of the water we drink and use for agriculture, business and leisure.

We had come to a point where we despaired of ever finding common sense governance on this issue at Queen's Park. The massive, unprecedented and dogged opposition to this project always had more than the NIMBY syndrome as its wellspring. In particular, those of us connected to municipal governments were always pragmatic about the unavoidable reality of some landfill capacity somewhere for some quantity of municipal waste. We accept that landfills can be built with care and control and that their negative impacts can be reduced.

Let me be blunt, as John has been. It's just that this particular Adams mine proposal was fundamentally flawed at its very core. It proposed to dump 20 million tonnes of municipal waste over 20 years into a leaking, fractured rock receptacle. This man-made receptacle has a depth of 600 feet. I'm happy you've seen images of it now so that it's very real to you and you'll understand why we could marshal 2,000 people into civil disobedience to block the railroad cars going to the Adams mine. You could do this because you only had to see it; you did not need to be a hydrogeologist to understand that this was a crazy project.

Indeed, while operating as a mine, our friends and neighbours worked as pumpers. It required continuous round-the-clock pumping; two pumps with six-inch-diameter pipes running around the clock, year-round, when this mine was in operation. Today, with no pumping, the natural level sits at over 300 feet of depth. Water flows are of such quantities and quality that Arctic char is raised commercially in an adjoining pit on the same prop-

erty a quarter of a mile away. If my plan had worked right—I was on a business trip in Halifax and interrupted it to join you here and I couldn't have the fish with me for five or six days on this trip, and I wouldn't have cheated you with halibut from the Maritimes—I would have brought you Arctic char that is now sold in restaurants in northern Ontario produced by Cold Water Fisheries from Manitoulin Island. They've had an experimental plot going there, aquaculture, for a year and a half: the commercial production of Arctic char.

I know you've all read reports and I believe many of you have municipal experience, so you must be like me and have had consultant and expert opinions up the wazoo. To say that there is no water flow in and out of that pit when, next to it on the same property with the same ownership, you can raise fish, that somehow tells you that there is a regular, steady flow. I'm sorry you don't have the fish or the packaging. It'll be for another day.

The proposed landfill would have been located just south of the height of land—this is the area where water splits and flows either to the Arctic, to Hudson Bay or south into the Ottawa River watershed. The location guaranteed maximum damage to maximum area, had leakage occurred. This area's lakes and rivers feed the Ottawa River. It's not just a northeastern Ontario issue. People at the town councils in Pembroke, Renfrew and Arnprior passed resolutions against this because they draw their water from the Ottawa River, and so does Ottawa. Over 60 Ontario municipalities passed resolutions against this as far-flung as Kenora, Hearst, Renfrew and Pembroke.

The proposal included no clay or plastic liners to either contain leachate or exclude contact with natural inflows of groundwater. Instead, it relied on a highly engineered system to control volume and flow, touted as a state-of-the-art system. State of the art: I'm sure going to hear a lot of that as you wrestle with the nuclear plant issues in the coming months. This is always a favourite of proponents. It consisted primarily of a granular drainage, which is a crushed rock—gravel—lining against the wall of the pit so that water would not flow into the garbage as it flowed in; a perforated pipe collection network at the very bottom of the pit—this is a tile bed, folks; this is to collect at the very bottom leachate as it flowed down and water that flowed in from the sides—and the massive pumping station feeding a water-treatment plant on the surface.

Here's the kicker, for those of you who've worked on municipal bodies or had anything to do with sewage and water systems, pipes buried underground: The first two components, the gravel lining around the pit and the collection pipes at the bottom are non-serviceable. They are buried under 20 million tonnes of waste, 600 feet deep. Only the pumping station is serviceable.

In this faith-based engineering we were to believe that this plumbing would work for 120 years in the active phase and 900 years in the passive phase. We were to believe computer modelling that gravel filtration mediums would not clog up, that perforated collection pipes would

not fail in an environment of decaying organic and chemical waste. Contrary to all of our practical, everyday experience with buried water and waste services, we were asked to sign on to an absurd, 10-century mechanical guarantee, one where failure could not be remediated.

As stated at the opening, we applaud the Ontario government's forceful legislation. However, we wish to propose the following matters for the committee's consideration. While we agree with some limited compensation to the developers for reasonable expenses incurred for direct project development, we want the examination of these expenses to be stringent and meticulous. We request that this committee specifically exclude lobbying costs in particular and, in general, that it exclude marketing and promotion costs. The committee should consider that marketing and promotion are standard business and free enterprise risks and should not be rewarded by reimbursement.

Indeed, the key proponent you met this morning, Gordon McGuinty, launched the Adams mine bid with full knowledge of the business risks involved, having just been rebuffed by the Quebec government in a failed six-year attempt to develop a similar project in Bristol, Quebec. This is just across the river from Pembroke. The project involved municipal waste hauled to an abandoned open pit mine. Guess what? No reimbursement was considered or granted. So this was a fully aware businessman who launched into a second attempt to develop an open pit mine into a garbage—the one in Quebec was intended for Montreal. Lavalin was a partner in the bid, and some other partners who were also part of this one. This we can document for you. It is a public record. Surprise, surprise, John, it was accompanied with legal prosecution and legal proceedings against citizens in the Bristol area.

In reference to the lobbying costs, it has been suggested that the proponents expended major efforts in Michigan to thwart Toronto's legitimate disposal contracts there. These should certainly not be rewarded by reimbursement. I think you'll agree.

We cannot leave unsaid the fact that individual citizens, municipalities and various formal associations or institutions in our area have incurred huge direct expenses in this matter. Beyond the expenditures of time, personal expertise and sundry expenses which are the duty and pleasure of conscientious citizens, there is a case we wish to make. Many carried the ball for the provincial government. Indeed, the detailed scientific examinations paid for by the Ontario Federation of Agriculture, the Timiskaming Federation of Agriculture, the Timiskaming environmental alliance, Public Concern Timiskaming, the Timiskaming First Nation, Northwatch and other amounts to hundreds of thousands of dollars. I was the treasurer on some of the campaigns. We have collected, I'm sure, well over a quarter of a million dollars to beat this project, which should never have seen the light of day. It should have been laughed off the table by the MOE. In effect, these groups provided due diligence for the citizens of Ontario. They should be reimbursed. We ask that you consider full reimbursement for legiti-

mate analysis and scientific reviews of this project, as commissioned by third parties.

Thank you for your attention.

1420

The Chair: Thank you, Mr Bélanger. Mr Prue, did you have any questions?

Mr Prue: The only question I would have is, do you have any dollar amount or limit that you would want to put on the reimbursement? Can you give us a ballpark figure? If you spent a quarter of a million dollars and you're trying to limit it to scientific matters, what would that be, \$100,000?

Mr Bélanger: I believe the federation of agriculture, the TFA, in and of itself, has spent over \$100,000. Am I right, John?

Interjection.

Mr Bélanger: Over \$100,000. Timiskaming First Nation, which is the Algonquin First Nation, also hired expertise. I don't have the numbers for them.

When I say a quarter of a million dollars, these are campaign figures. We maintain full-time offices, and for those I don't expect those to be reimbursed. Those are citizens' duties. My own time, my phone bills, John's time and phone bills, I assure you, we do not want reimbursement for. However, the legal costs, the legal challenges we've had to mount to stall this and try to stop it, I think the amount will be close to a quarter of a million dollars that can be documented, legal work and scientific critiques and analysis—all raised by citizens, all well-accounted for, I'm sure, and all in defence.

You can understand, on a human basis, that while we applaud the courage of the government for finally killing this thing, there is a bitter feeling in knowing the proponents will actually now get their expenses reimbursed, and those will include the expenses for lobbyists in Toronto, who I'm sure you were well aware of when you were in Toronto. Some of these self-same lobbyists are now prominently in the papers—

Mr Prue: I know them all.

Mr Bélanger: —with the computer leasing programs. These same fellows worked the Adams mine. These same people worked the Michigan governor. These people worked in Washington. This should not be reimbursed.

We also know there are some inherent conflicts in reimbursing them, and we want you to be very careful with this. Some of the shareholders in these firms are lawyers who benefited from great legal contracts in pursuing this. In effect, they will both be reimbursing themselves for their legal fees and benefiting as shareholders.

The Chair: Mr Leal.

Mr Leal: Thank you very much, Madam Chair. Mr Bélanger, on page 3, second paragraph, you talk about the lobbyists. A ballpark figure? And would you have a couple of names off the top of your head?

Mr Bélanger: I think there's a fellow named Jeffrey Lyons that I saw hovering around city hall. I think he had a permanent office there. I believe there were some other lobbyists who I can't name at the moment.

Mr Leal: Any sort of ballpark figure?

Mr Bélanger: I think there were also PR firms—Hill and Knowlton—involved.

Mr Leal: Any ballpark figure?

Mr Bélanger: I don't know. Knowing these fellows—

Mr Leal: Are we talking half a million dollars?

Mr Bélanger: I'm sure.

Mr Leal: OK. Thank you.

Mr Flynn: Just so I'm clear, I don't want you to leave any impression that we don't all understand. What you're saying in that paragraph is that you believe that people who were in the employ of the proponent of the Adams mine went to Michigan to attempt to convince the government of Michigan to cancel its contract with Toronto?

Mr Bélanger: Yes. You'll understand that from where we sit, 600 kilometres north of here, we got this information. We saw the activity, we can try to document it for you, but some of it was revealed in direct contacts between the Premier's office and the governor's office in drafting letters of protest, which were drafted, in effect, at Queen's Park for the governor. There have also been documented news stories about congressmen in the US and legislators in Michigan being approached, so we can provide those for you. I think if you see any claim for those expenditures, you should just ask for details.

If I may say so, it's a double whammy if you ask us to do the investigative work for you and pay for it. We've already done the rest.

But that is the case. I have no hesitation here in saying that that has been part of their business plan. I have to tell you, I happen to be an owner-operator-businessman of a few businesses. I have some extensive business experience. I think that's legitimate hardball in business, but I wouldn't have the gall to expect to be reimbursed for having lobbied against my own province. I'd just say, "Well, I tried to make a buck and I lost."

Mr Flynn: Just so I'm clear, as I say, I don't want you to cast aspersions that can't be backed up, so I'll tell you what I'm getting out of your comments: The outcome of that, had they been successful, would have been the closing of the Michigan border to Toronto garbage, thereby throwing the city of Toronto and its citizens into a crisis and making the Adams mine look like a place that should be used.

Mr Bélanger: Yes.

Mr Flynn: So it was a deliberate attempt to put the city of Toronto into a garbage crisis?

Mr Bélanger: That's right.

Mr Flynn: Thank you.

The Chair: Thank you, Mr Bélanger. We appreciate your coming out to the Legislative Assembly committee and for taking the time.

TOM ADAMS

The Chair: Our last delegation is Mr Tom Adams. He's a councillor in ward 6, town of Oakville. Welcome. Could you introduce yourself? I gather you're speaking as an individual.

Mr Tom Adams: Yes, I am.

The Chair: You have 10 minutes.

Mr Adams: Thank you for the opportunity to address this honourable committee of the members of the Legislature regarding the Adams Mine Lake Act. I am Councillor Tom Adams. I'm here today to give you my opinion of Bill 49.

I have the distinct honour of representing ward 6 in Oakville, which is the northeast part of Oakville. Ward 6 is a very fast-growing community within Oakville. It's a community very much concerned with the devastating shock of urban sprawl, the rampant expansion of urban boundaries and the associated negative environmental impacts on Oakville's air, land and water quality.

The Adams Mine Lake Act shows that the Liberal government is making good on its promise to deliver real, positive change to ensure that Ontario can rely on cleaner air, water and land. All Ontario residents deserve a cleaner environment in which to live, work and play. Of this I'm sure no member of the Legislature would disagree.

Recently the provincial government also announced a new strategy to help manage waste throughout the province by setting a new target to divert 60% of waste from landfills by 2008. This again shows the commitment to finding innovative strategies to solving long-standing issues that have plagued our province.

While Halton has not been a leader in curbing urban sprawl—a problem with which we could use some help—Halton has been a leader in improving its waste diversion rate. For this, we have been able to dramatically increase the lifespan of our local landfill. It is this commitment that we believe needs to be followed by other municipalities throughout the province, but most particularly by Toronto. Municipalities need to find local solutions to their own waste management problems. Exporting garbage to distant landfills is not a sustainable long-term solution. Exporting garbage to other countries, provinces or regions is only a Band-Aid solution that should be addressed through made-at-home solutions such as banning organics and recyclables in landfills, expanding composting facilities and providing funding for new technologies to divert greater levels of waste from landfills.

The Adams Mine Lake Act will close the door on a controversial proposal, a proposal that worried thousands of residents throughout Ontario for its disrespect of the environment. Many people in Ontario were not convinced that the site was safe for use as a landfill. They were concerned that water contamination could result from the use of the site as a landfill site. One needs only to mention Walkerton to recall the damage that can result when governments fail to act to protect water quality for the people of Ontario.

Bill 49 is intended to prohibit the use of lakes as landfill sites, to prevent the use of the Adams mine site as a landfill and to deal with matters related to the government taking this action. The proposed definition of a lake is to include surface water that results from human

activities and that is directly influenced by, or influences, groundwater. These are actions that I support. The use of any lake site for landfill purposes in Ontario is unacceptable. It's unacceptable for local residents and it's unacceptable for future generations.

The provisions within Bill 49 for compensation to be paid to the owner of the Adams mine are fair provisions. This provision shows the government continues to support the rights of property owners and is in no way intended to be an expropriation of the Adams mine property. The compensation is fair in that it provides for reimbursement for the costs incurred in bringing forward the proposal.

Bill 49 is a good piece of legislation. In combination with the strategies to support a higher diversion rate from landfills, I believe the Liberal government is moving in the right direction. I know members of my community will support increasing the local diversion rate. I look forward to working with the provincial government to help find innovative ways to reduce, reuse and recycle within my community, and I encourage every other community throughout Ontario to do the same. Encouraging the 3Rs makes sense because it's a made-at-home solution to a made-at-home problem, and we should all be responsible for solving our own problems.

I would like to encourage the provincial government to continue its efforts at finding long-term, sustainable solutions to our collective and local waste management problems. In my opinion, the best solutions are those that are generated in the local community. They are the best solutions because local residents are forced to deal with the results. When residents know that their personal efforts to recycle are helping to improve the local environment, they're more likely to act. Thinking globally and acting locally are not just nice words; they contain

real lessons in how to manage environmental issues like waste management. Communities that deal with their own waste—communities like Halton—are communities that are successful. This success is generated in part from the ability to engage local citizens in a local matter that is close to home.

I believe Toronto was ready to begin creating their own solution when they turned down the Adams mine site, and I congratulate them on that decision. I encourage my colleagues in Toronto to adopt strong waste diversion targets, such as the 60% target included in the McGuinty government strategy, as I believe this is the first step in solving their local problem.

Thank you for your time this afternoon. In conclusion, I would like to state again my support for Bill 49 and the waste management strategy being proposed by the Liberal government. These are steps that I think will act to safeguard the natural environment for future generations. I'd be pleased to take any questions.

The Chair: Mr Chudleigh, did you have any questions?

Mr Chudleigh: No.

The Chair: Anybody else? You did such a good job, there are no questions. Thank you for your delegation. We appreciate your coming out.

Mr Adams: Great. Enjoy your long weekend.

The Chair: This concludes the hearings on Bill 49, An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes. I'd like to conclude by thanking the support staff we had. They were great. Their assistance was very helpful.

We are adjourned to June 3 for clause-by-clause consideration. That's at 10 o'clock in room 228.

The committee adjourned at 1432.

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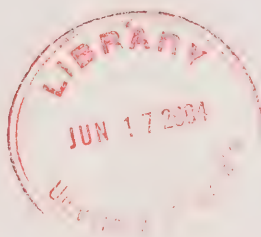
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Standing committee on the Legislative Assembly

Adams Mine Lake Act, 2004

Comité permanent de l'Assemblée législative

Loi de 2004
sur le lac de la mine Adams



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 3 June 2004

Jeudi 3 juin 2004

The committee met at 1007 in room 228.

ADAMS MINE LAKE ACT, 2004

LOI DE 2004

SUR LE LAC DE LA MINE ADAMS

Consideration of Bill 49, An Act to prevent the disposal of waste at the Adams Mine site and to amend the Environmental Protection Act in respect of the disposal of waste in lakes / Projet de loi 49, Loi visant à empêcher l'élimination de déchets à la mine Adams et à modifier la Loi sur la protection de l'environnement en ce qui concerne l'élimination de déchets dans des lacs.

The Chair (Ms Linda Jeffrey): Good morning. I'm going to call this meeting to order. This is the standing committee on the Legislative Assembly, and it's called to order. This morning we are called to consider Bill 49, the Adams Mine Lake Act, 2004. We meet today for the purpose of clause-by-clause consideration of the bill.

The committee has determined that each caucus is to be allowed up to 10 minutes to make opening statements at the commencement of clause-by-clause consideration.

I will now recognize Minister Dombrowsky to make the first 10-minute opening statement.

Hon Leona Dombrowsky (Minister of the Environment): Thank you, Madam Chair. I am very pleased to have this opportunity to take part in this part of the debate on Bill 49, the clause-by-clause. It is an important part of the McGuinty government's commitment to deliver real and positive change. We believe that Ontarians deserve a cleaner environment and cleaner communities that benefit the people who live in them.

Bill 49 is immediately important to the northern Ontario communities most directly affected by the Adams mine proposal. But the act also sets important protections and precedents for all communities. The Adams Mine Lake Act would help achieve our goal of clean, safe, livable communities across Ontario.

The local community has repeatedly voiced concerns about the Adams mine landfill. We have heard those concerns, and we took action with Bill 49, which stops the Adams mine proposal. We are not convinced that the Adams mine proposal could be operated safely to protect the environment. The act we are discussing is about protecting our environment, respecting our communities and ensuring fairness.

The Adams Mine Lake Act, 2004, has three broad objectives. I will briefly refer to them. The first is to

prohibit the use of lakes as landfill sites. For the purposes of the bill, a lake includes surface waters, including both man-made and natural lakes.

Second, the proposed legislation would prevent the use of the Adams mine site as a landfill. It would revoke all approvals and permits issued by the Ministry of the Environment prior to the date the legislation takes effect.

Third, Bill 49 would prevent any further legal action being taken against the crown as a result of the legislation. Bill 49 is not an expropriation of the Adams mine property. The Adams Mine Lake Act would require the province to pay the owner of the Adams mine compensation for reasonable expenses paid prior to the date of first reading of the bill. Under Bill 49, expenses would be defined as costs incurred for the purposes of developing the Adams mine landfill. Compensation would not be paid for any further profits the owner may or may not have received as a result of operating a landfill at the Adams mine site. The amount of compensation would be determined based on the expenses minus the fair market value of the site at the date the legislation comes into force.

The Adams Mine Lake Act adds up to an excellent piece of legislation that protects the environment and the people of Ontario and is fair to the owner of the Adams mine.

Stopping the Adams mine proposal does not address the root of our current waste management challenge. As we are now doing with electricity, we need to create a culture that values conservation, not consumption. Ontario has set an ambitious new provincial target to divert 60% of waste from disposal by the year 2008. Our government has announced a new strategy to manage Ontario's waste and reduce the burden on landfills in our province. It is a far-reaching strategy that will help us by setting targets for waste diversion over the next four years.

We will release a discussion paper in the coming weeks and consult across the province. Our strategy will also address root issues with the environmental assessment process that have led to so much uncertainty for so long. We have made a commitment to establish an expert advisory panel to identify ways to improve the environmental assessment process to provide greater certainty and timeliness while maintaining or enhancing environmental protection.

It is important that this committee understands the full context around the Adams Mine Lake Act. The important

protection measures contained in the act are part of a broad plan to ensure that our province's waste management plan is sustainable and responsible.

While we have put a lot of hard work into making the proposed legislation responsive to the needs of Ontarians, there is always room for improvement. Shortly, I will introduce three amendments to the act that are the product of the valuable contributions that the witnesses made and the fine work of this committee. Thank you, Madam Chair.

The Chair: Thank you, Minister. I believe Mr Barrett is making an opening statement.

Mr Toby Barrett (Haldimand-Norfolk-Brant): With respect to Bill 49, it has been close to two months now since the introduction of this proposed legislation, the curiously titled Adams Mine Lake Act, with a new definition of a lake: a man-made body of water of anything over one hectare—roughly 2.2 acres, for those of us who are involved in farming. I guess with legislation you can redefine anything. Conceivably, perhaps to use a precedent here, I suppose we could redefine the trillium as Ontario's state mammal. I'm not sure how far you could take this.

I've certainly received calls about the legislation from not only across the province but from Michigan as well, from people who feel that pulling off the table the only Ontario-based option for Ontario-based trash is not a good idea.

Again, referring to the title of this act, what we consider the unprecedented affront to property rights and the issue of whether compensation is appropriate or not—maybe it's not unprecedented. I'm sure some of this is coming up in the Oak Ridges moraine discussion as well.

What concerns us, when you look at this legislation, is that there is no plan with respect to the future of waste disposal. The long title itself does use the term "disposal of waste." When you go through the legislation, you don't see the words "recycling" or "diversion." There's really no discussion at all of where future landfill or expansion of landfill would be; really no presentation of any technical solutions.

Perhaps this was put together fairly rapidly. I understand there are some amendments coming, which we'll take a look at as well. We submit it's bad legislation to that point. We're not considering any amendments because we're opposed to this legislation. It's actually that simple.

No one really knew there was a lake anywhere near Adams mine. People who were involved were under the impression it was an open pit mine. It's an iron ore mine developed by Dofasco. I can quote the Toronto Sun, April 7, titled:

"It's Not a Lake, Stupid

"Dalton McGuinty's Liberal government doesn't know a lake from a hole in the ground."

Of course, as we're all learning more recently, people are indicating they are having little faith in the word or the words or the wordplay coming from this particular government.

More important than what I consider the curious wordplay at work here, however, is the fact that removing the Adams mine option underlines the complete lack of any plan for future waste disposal in the province of Ontario. As we know—the number varies on which side of the border you're hearing it from—there are something like 125 tractor-trailer loads of Toronto trash that cross the border into Michigan every day. I know when I was driving down to the Milton hearings—I think most of us are familiar with these tractor-trailers. The trailers themselves don't seem to have any markings on them. I'm not aware of any markings on the trailers themselves. The only thing on there is the licence plate that says "Ontario: Yours to Discover." That's what people would see as the loads go across the Bluewater Bridge into Port Huron, Michigan.

At the hearings down in Windsor we heard from Michigan Representative Daniel Acciavatti. He indicated very clearly the actions, resolutions and bills that he has taken the lead on, many of them directed toward limiting the importation of garbage into the state of Michigan. If anyone needs the list of bills—there are many bills, well over a dozen bills that have come forward from the state of Michigan.

Again, resolutions are being considered by the state aimed at protecting themselves from out-of-state waste and also in a more proactive sense encouraging Ontario to deal with its own garbage concerns. I know one bill that is before the House encourages the Ontario Ministry of the Environment to take action with respect to developing new landfill capacity and to take action with respect to expanding landfill capacity. The people in that part of Michigan are looking to this environment minister to come up with some solutions.

On May 17 of this year, Sarnia Mayor Mike Bradley is reported to have said, "The suicide ballet of trucks going down the highway every day is unacceptable."

Anne Marie DeCicco, the chair of the Southwestern Ontario Trash Coalition, has made clear her intention to seek solutions from this government. She's quoted in the London Free Press: "Instead of focusing on Toronto city council, it would be more effective for the coalition to target the provincial government."

Since the introduction of this bill, I, for one, as environment critic, have asked our Minister of the Environment about these concerns a number of times. In the answers, there's really little indication of a plan with respect to future landfilling. Certainly the 60% waste diversion commitment has been made clear. We know that's a moving target. I know in the Legislature on December 3 it was targeted to be fulfilled by the year 2005. At present, we're looking at the year 2008. There may well be another year in the future, 2010 or whatever.

1020

We know that marginal opportunity costs are going from 50% to 60%. There is evidence that it is much more expensive for our municipalities to go beyond the 50%, to 60%. Again, theoretically, once we reach the 60% goal, the question remains, where does the remaining 40% go? What landfill would it be directed to?

The Premier made a comment to the media April 6: "We recognize that we are going to have to open up one or more landfills.... Let's not pretend we are not going to have to do that." I think this is a challenge for this committee and for third reading debate as well, to assist our Premier and our government in that commitment.

In a sense, the province has taken the lead in Ontario in revving up the NIMBY pressure that we are all so familiar with over the decades. It really does beg the question. The question remains, whose backyard are we looking at for any new or expanded landfills in the province of Ontario, if state representatives like Daniel Acciavatti or presidential aspirants like John Kerry are successful in limiting or, as with some people's goals, closing that Michigan border?

When we had testimony in Milton we were certainly made aware that the regional chair of Halton doesn't want garbage in her landfill. She was quite clear, in her pleas to this committee, to look elsewhere. She said during her testimony:

"Surely the case has been made already to eliminate Halton's landfill waste management site as a possible short- or long-term solution to the waste disposal woes we have today. If you were to bring Toronto garbage to Halton today, in two years Halton would not have a landfill, and yet for Halton's purposes we have 40-year capacity. That is a very different number. This is a question of political fairness, and that's how we feel about it in Halton."

I'm disappointed we didn't have representation from Durham, Peel or York. Again, their garbage goes to Michigan. I would assume they feel the same way as the Halton chair, but I can't speculate on that. The Halton chair went on to say:

"Please eliminate Halton's landfill site and any municipal landfill sites which are unwilling hosts from the list of options to be considered in a time of crisis. Please amend the certificates of approval to include the option for private landfill sites to take this garbage."

I will say, farmers are nervous. There's a perception out there that if waste is not going into abandoned iron ore mines, where does it go? Does it get dumped on farmland? There is a concern there.

There is a bit of a shockwave. This hasn't been headlines in the Toronto media necessarily, but there's a bit of a shockwave across the province. People will not be calm until this government tells us exactly what it plans when the inevitable—in many people's minds—happens, when Michigan refuses to allow one more truck to dump out-of-state garbage across the border.

Do I have a signal on my time or not?

The Chair: Yes, you do. If you could summarize, please?

Mr Barrett: No, that's fine.

Mr Rosario Marchese (Trinity-Spadina): I just want to point out that I'm not the environmental critic for the NDP, but I hope that I'm reflecting Marilyn Churley's views as best I can. Second, I always get nervous about supporting the government because you never know when you're going to appear in some little flyer saying,

"Even Rosario Marchese supports this," kind of thing. So you get nervous. It certainly got Michael Prue nervous, when he appeared in the Hamilton by-election, saying, "Michael Prue supports so and so." So if it happens more than once, then the opposition says, "Hmm, maybe we should be careful about what we support of any government initiative."

Mr John Wilkinson (Perth-Middlesex): Why don't we use a picture with different glasses?

Mr Marchese: Then we could disguise ourselves.

We do support Bill 49. We are happy that this minister and this government have prevented the disposal of waste at the Adams mine site. It would have been an environmental disaster. I'm not sure how much of our garbage would have gone there, but it's something that, in my view and the view of many New Democrats, would have been a disaster. So this is a real victory for all the hard-working people in Kirkland Lake who opposed the Adams mine landfill, including aboriginal communities, because we know they were actively involved as well. It's also a real victory for environmentalists in both the north and south who took an active position against the sending of garbage into the Adams mine.

We were concerned about the compensation. In my view, it appears to be fair, reasonable. There are some changes and I'm going to be asking a couple of questions to see whether those changes affect the intent of the bill in any way. If they don't, we're OK with that part.

Your discussion paper around waste reduction: Let's wait and see. I'm not sure whether it includes the implementation of a deposit return system for beverage containers. Eight other provinces have it and Michigan obviously is doing it. We think you should be moving in that direction. I don't know whether you are or not. I don't know whether you're commenting or will comment on that.

We also think that we should require sectors like the computer and technology sector to deal with their own waste. There's a whole lot of waste that comes from that sector. I'm not sure what opinion you have in that regard or what you might be doing. We're interested to see how you're going to deal with the other waste that needs to be dealt with, but not sending it to the Adams mine is something that we support the government in.

The Chair: That concludes our opening statements. We will now commence clause-by-clause consideration of Bill 49.

At the outset, I am required by standing order 78 to ask this question: Are there any comments, questions or amendments and, if so, which sections? I understand that there have been amendments filed with the committee dealing with sections 6 and 7 of the bill.

Mr Ernie Hardeman (Oxford): I wonder if staff has an extra copy of the bill. I have all the amendments but I don't have the bill with me.

Hon Mrs Dombrowsky: Madam Chair, I would like to move some amendments. I just need to be clear, because this is the first time I've attended clause-by-clause:

Do you go through all of the bill or do you entertain amendments?

The Chair: I think we're doing it section by section. Currently, that's how we're doing it. At least, that's how I've scripted it today, that we would do that.

So I guess I'll begin with section 1, if everybody has a copy of the bill. It looks as though they do. Shall section 1 carry? All those in favour? All those against? That's carried.

Is it the pleasure—

Mr Hardeman: Madam Chair, if I could request that for the next sections there is a recorded vote for each section, or each time you call the vote.

The Chair: OK. That's recorded.

Is there a desire to go through each section until we get to 6, consecutively? OK. I get the direction that we will.

Mr Marchese: You could move the whole, from 1 to 6, if you like.

The Chair: That's why I'm looking for direction. If—

Mr Marchese: Why don't you do that?

The Chair: OK. There has been a request that we collapse comments or questions on sections 2 through 5 of the bill.

Mr Barrett: I do wish to speak to the next section, not all of them together.

The Chair: OK. We'll do it individually, then.

Are there any comments or questions on section 2 of the bill?

1030

Mr Barrett: I have a comment. Section 2 is a very brief section: "No person shall dispose of waste at the Adams Mine site." Again, that raises the question, which is not answered in this legislation: Where does a person dispose of waste in the event that there is a need for new or expanded landfill, or in the event, as we heard in the Windsor testimony—actually, I might draw people's attention to the paper put together by Andrew McNaught, the research officer helping this committee. He does highlight, as he titles it, "The View from Michigan," again speaking to section 2. "Michigan residents view the demise of the Adams mine project as evidence that Ontario is abandoning efforts to create a made-in-Ontario solution, and that the province is not concerned about the amount of solid waste being shipped across the border to Michigan landfills."

As we know, the state spent a number of years developing that landfill capacity. I'm assuming the capacity was planned and designed for the greater Detroit area. I don't have information from this research about the timelines or the future capacity of the landfills for Detroit, or whether it was a business decision—I know it's the private sector that runs the Sumpter township landfill; I think it's Republic—or whether Toronto is using up Detroit's future capacity.

It goes on to say in our research paper, and this came from Mr Acciavatti, the state representative: "Michigan's strict waste disposal standards could also make this option less attractive"—again, shipping in or trucking in

Toronto waste. "Until such time as there is 100% waste diversion, the responsible course for Ontario is to ensure that it has adequate landfill capacity. Michigan strongly urges the province to reform its environmental assessment process"—and I understand some of this is in the works—"to facilitate approval of solid waste disposal projects," and he makes reference to a resolution of the Michigan House of Representatives. "The current situation, which sees 250 trucks a day coming over the bridge into Michigan, creates a serious perception problem, one that is, unfortunately, beginning to shape the relationship between the two jurisdictions."

We also have testimony here labelled "Halton Region." "Halton region is concerned that Bill 49 could have a negative impact if the garbage from other municipalities ends up in Halton's landfill."

Those are my comments on section 2. We will not be supporting section 2.

The Chair: Minister, did you want to respond? I think there was a question at the beginning—

Hon Mrs Dombrowsky: No.

The Chair: Mr Wilkinson, you have moved the motion.

Mr Wilkinson: That was out of order, actually. You're running it.

The Chair: The motion has been moved for consideration of section 2. A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Section 2 is carried.

We'll be considering section 3. Are there any comments or questions on section 3 of the bill?

Mr Hardeman: As wrong as I think the whole bill is, and that isn't going to change as we're going through clause-by-clause, the question on section 3 is whether it isn't somewhat redundant in preparing legislation to have one section, which the government has just seen fit to approve, which is, "No person shall dispose of waste at the Adams Mine site." If that section is approved by the Legislative Assembly, then what possible reason or need would there be to revoke all the permits that were previously given to do that? In my opinion, automatically, if no one can do that, then all the approvals that have been given for the site would be redundant, because they were given by the same minister. The same ministry that was there gave the approvals to put waste there, so if they've taken away the right to put waste in the Adams mine site, then obviously the process of that revokes all the permits.

On August 13, 1998, there was a permit issued under the Environmental Assessment Act for that step of the

process that the corporation went through in order to develop a landfill site in the Adams mine. At that point in time the proponents of the site had reason to believe that after they'd gone through all the requirements the province had put in place, they had reached the conclusion that at least this far in the process they were going to have an approval to put waste in that site.

When the minister now comes along with no further scientific evidence, with no further information, and says, "We're not going to allow any person to put any waste in that site," in effect she's saying, "I'm revoking that permit." It seems reasonable to me that's what it is. So I don't know why we would repeat that, except maybe to put salt on the wound: "Ha, ha. I told you it wouldn't work. Now it doesn't work." I just can't see any reason why that would be in.

Going to number 2: "Certificate of Approval No. A 612007, dated April 23, 1999," again, this corporation has moved on. A year later, it has done a whole lot more work in order to facilitate the disposal of waste in Ontario, with the assistance and advice of the Ministry of the Environment, saying, "Yes, you're following the rules. We've reached that point, the next step of the process, and everything looks like you could proceed and you should proceed, and if everything else follows along and falls into place, eventually you will be able to put waste in that site." I think section 2 automatically eliminates that possibility by saying, "No person shall dispose of waste" in that site. I can't see any reason why that would be there.

Approval number 3, July 9, 2001: The applicant has gone through a long process again and spent millions of dollars more. I don't know why that would be put in separately in this piece of legislation when one line, "No person shall dispose of waste at the Adams mine site," covers all that. I don't know why we have to have a piece of legislation that revokes each one individually.

It goes on: "Any permit that was issued under section 34 of the Ontario Water Resources Act before this act comes into force...." In fact, that approval is not under the Environmental Assessment Act. It wasn't approval for waste disposal; it would seem to me to be an approval to dewater the site, to pump water, and that's why it would fall under the Environmental Assessment Act. However, why would it fall under the Ontario Water Resources Act?

I guess I have some real concerns that technology changes and the needs in our society change. I expect 25 years ago—it's been almost that long ago that the corporation has been involved in trying to develop this site—or 50 years ago no one had envisioned that you might want to dewater the site and consider it for waste disposal. It's not unreasonable to assume that in the next 50 years some other purpose may be found for that site that requires the dewatering of the site for whatever other reason. If this application or this permit to dewater is not directly related to waste disposal, I see absolutely no reason to revoke that permit, so that whoever owns that site or wants to do something else with it, if their only

purpose was to dewater it, would still have the licence and the permit to do that.

I see absolutely no reason to do that, except that it falls under the same category that says, "No person shall dispose of waste at the Adams mine site." I think it's exactly the opposite side of the thing. I don't know why that section is in there at all, and, in this case, that's the reason I'm voting against it; not because I'm opposed to the bill, but because I think it's a redundant section of the bill and it's just putting salt on the wound. In that last one, number 4, it in fact goes well beyond not putting waste in the Adams mine site; it prohibits people from dewatering it for any other purpose. I'm opposed to that.

1040

The Chair: The ministry response?

Interjections.

The Chair: It was such a long question, I figured it deserved an answer. Perhaps the ministry will circumvent the question.

Hon Mrs Dombrowsky: I have with me this morning Leo Finnigan, who provides legal advice to the Ministry of the Environment. He can speak to all of the very good reasons why section 3 is a part of this bill.

Mr Leo FitzPatrick: Section 3 is included in the bill simply for greater certainty. It's intended to put the matter beyond dispute. In addition, subsection (2), which talks about issuance of permits, relates only to the application mentioned in paragraph 4 before that. If a new application for a different purpose were to be submitted in the future, it could be considered.

Mr Barrett: With respect to section 3, the one that's titled "Revocation of approvals related to Adams Mine site," as Mr Hardeman indicated, the August 13, 1998, approval to Notre Development is revoked, a certificate of approval of April 23, 1999, is revoked, approval of July 9, 2001, is revoked, and any permit that was issued under section 34 of the Ontario Water Resources Act.

I guess in broader terms, there was a huge process over many years that was followed by ministry staff, by proponents of the site, municipal staff, municipal councillors, experts from all sides, there was all kinds of scientific evidence, as Mr Hardeman mentioned, all followed according to the rule of law in Ontario. According to the rules of the province of Ontario, a conclusion was reached.

Today, this Liberal government is proposing before the Legislature that we throw all of that out the window. It just raises the question: What kind of message are we sending to the people not only in the landfill business but to investors and the business community in Ontario, or those from outside of Ontario that would invest in this province?

My understanding is we're not supposed to change the rules retroactively. We did witness that with this government just before Christmas with a retroactive measure targeting families who chose to send their children to independent schools. My understanding of our business here is that we don't change the rules retroactively, whether they are financial rules, taxation rules or rules

about the environment. We want to encourage people to have confidence in the rule of law, to have confidence in the province of Ontario as a place to invest and do business, to take a risk. We want them to have certainty about what the law is and what the process is. I find that this revocation of certificate of approval permits flies in the face of that principle. I'm very concerned about the precedent and the trend that we see, not only in this legislation, but in other legislation as well.

Mr Marchese: I understand Mr Barrett's concerns. But just to remind him, when they got elected in 1995, they became the government. When you become the government, you can argue that you have a mandate. Their mandate was to get rid of the anti-scab legislation because they thought it was bad; New Democrats thought it was good. They got rid of employment equity because they thought it was bad; we thought it was good. So new governments do different things.

In this case, we've got Bill 49 and it's in contradiction to what the previous government did. In this case, New Democrats support Bill 49. It's as simple as that, really.

Mr Hardeman: Just a quick comment to Mr Marchese's comments. I would agree with him that governments with new mandates have just that, new mandates, and they take government in different directions than the previous government did. That's why the people get to make that decision. I have no argument with that. But in both cases that Mr Marchese mentioned, there was no retroactivity. The situation that had taken place under the New Democratic government under employment equity, no one was asked to give up their job because they received it through employment equity legislation. This is all retroactive. These are all applications that were—

The Chair: Mr Hardeman, can I interrupt for just a second? Can we speak just to the bill today?

Mr Hardeman: Madam Chair, I am speaking to the bill.

The Chair: I really want to caution the committee, we're going to spend a lot of time going round in circles if we don't talk about the bill. So could you contain your comments to the bill, please?

Mr Hardeman: This bill is a very important piece of legislation. That's why I think we should spend considerable time discussing it. The only reason I mentioned the other issue is because, Madam Chair, you allowed Mr Marchese to put that on the record and, once it's on the record, I think I have every right to speak to that item.

The Chair: I think you have. I'd like you to speak to the bill, please.

Mr Hardeman: I do want to speak to the bill because it was in answer to the Ministry of the Environment's legal person who spoke on the need for revoking the approvals. I guess I have even more concern, and I didn't speak to that one, the last one, that no one can apply for the dewatering permit after the fact either. Going to the part I mentioned earlier, there may be other uses for the Adams mine. Again, I see absolutely no reason why you would then revoke the permit to dewater it for this

purpose, but why we would then put in a clause that no further application can ever be made to dewater the site seems to me even more redundant. I wanted a clarification on that.

Hon Mrs Dombrowsky: I believe that Mr Finnigan will be able to provide that clarification.

Mr FitzPatrick: If you read subsection (2) carefully, you'll see that it refers back to the specific application mentioned in paragraph 4. That was an application that has already been made and posted on the Environmental Bill of Rights registry and it relates to dewatering for the purpose of using the mine as a landfill. It does not apply to future applications that could be made for different purposes.

Mr Hardeman: Madam Chair, if I could. Further to the question to the legal branch, that means that if the first part of the bill should fail constitutionally, you can't take all these permits away and no new permit could be applied for unless you got that separately changed?

Mr FitzPatrick: Any new application would have to be considered. It's not prohibited. If it were for land-filling and landfilling were made illegal by the bill and turned down for that reason, a new application for some other purpose would be considered and could be approved if it's found appropriate.

Mr Hardeman: If I could, Madam Chair. I'm a little dense. With everything else in the bill, why would anyone—and we're going to assume they're brighter than I am—make a new application for dewatering the site with everything else that precedes it that says this site can never be used for landfilling? I mean, talk about redundancy.

Mr Wilkinson: You're arguing with yourself.

Mr Hardeman: Good heavens, talk about duplication and redundancy.

The Chair: Mr Hardeman, are you looking for an answer?

Mr Hardeman: No, I don't need an answer.

The Chair: OK. Thank you. Minister?

Hon Mrs Dombrowsky: Excuse me. For the record, I have mistakenly identified the legal counsel here. This is Leo FitzPatrick, who works for the Attorney General and provides advice to the Ministry of the Environment.

The Chair: Thank you for that clarification.

Shall section 3 carry? A recorded vote has been asked for.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Section 3 is carried.

Are there any comments or questions on section 4?

Shall section 4 carry? Sorry. Were you asking questions? You're voting?

Mr Barrett: We've asked to make comments on each section.

The Chair: Oh, on each section. OK. So comments or questions on section 4 have been asked for.

1050

Mr Barrett: Section 4 of this legislation kicks off by saying, "An agreement entered into by Notre Development Corporation or 1532382 Ontario Inc after December 31, 1988 and before this act comes into force is of no force or effect if the agreement is with the crown in right of Ontario," and it goes on from there.

This was actually raised in the Ontario Legislature. I would ask for comment from the representative from the Attorney General's office. We feel—and I know Mr Flaherty made mention of this as well—that the rule of law is being violated by this bill, just as it was violated by the retroactive legislation with respect to the equity in education tax credit, as I indicated before. I just wanted to mention that again, in case some people in this committee aren't clear of that connection.

If people don't understand that, I wish to quote from Sullivan and Driedger on the Construction of Statutes, page 553, where it is said, "It is obvious that reaching into the past and declaring the law to be different from what it was is a serious violation of the rule of law ... the fundamental principle upon which rule of law is built is advance knowledge of the law. No matter how reasonable or benevolent retroactive legislation may be, it is inherently arbitrary for those who could not know its content when acting or making their plans."

Again, we seem to have a pattern now of bouncing this over for comment from the minister or from the representative of the Attorney General's office.

The Chair: Minister, do you want to respond to that?

Hon Mrs Dombrowsky: I would ask Mr FitzPatrick to respond, please.

Mr FitzPatrick: In the strictest sense, this legislation before you is not retroactive. If it is passed by the Legislature, it will change the state of the law from that date forward.

Mr Barrett: I guess our opinion is that—and I know this was in Hansard and you've probably researched this—this government has brought forward retroactive legislation that affects the finances of the proponents. The bill itself talks about compensation. I'm not a lawyer. Maybe there's a mistake in the legislation around the issue of compensation if it's not affecting what was done in the past.

We know that many people were involved. They brought forward their environmental applications. They obeyed the law; they followed the process. They spent a great deal of money on lawyers, experts and environmental engineers. It does raise this issue. Is compensation warranted, given the position on this?

Mr FitzPatrick: The provision for compensation recognizes the fact that the things that the applicant has done in the past were done in accordance with the law at the time. The state of the law will change for the future if this bill is passed.

Mr Hardeman: I guess my comments are somewhat on the same line as Mr Barrett's. I understand the legal expression of the fact that this is not retroactive legislation because everything we're doing today, we're doing it today. But it is having a major impact on what happened in 1988. I guess that's my problem.

It relates to some of the presentations. One of the presentations in particular that seemed to catch the interest of all members of the committee, including the government side, was when we were in Milton. The presentation was made by the federation of agriculture. It relates somewhat to this section about how we are going to make null and void any agreements or anything that's happened between the government and the proponent, based on what could be a negative impact to the government if we didn't have the section in here. If this section wasn't in here, things would look different legally between the government and the proponent when this bill is passed.

Part of the federation of agriculture's presentation was, if I remember it, that you're doing a very good job, Madam Minister, of stopping waste from going into the Adams mine site, and we support that. But in protecting people from ramifications beyond this bill, you're doing a very good job of protecting the government, but you're doing diddly-squat for everyone else involved. If that's true, I guess I really have concerns about what privileges or benefits you're bringing to the government by holding yourself harmless in any deals that you've made, but not holding other people harmless in deals that may have been made.

If, as was just pointed out, it's legal, I think it's immoral. I think it's wrong if you're not providing the same protection for everyone else that you're providing for government. How come we're not holding safe and harmless everyone who owned the site prior to the present developers, and saying that they have to pay all the money back because nothing more can be done with the site? Why are we not nullifying all the deals that have been made, and only those that have been made with the government?

Again, I think this section is wrong, as I think the whole bill is wrong.

The Chair: Shall section 4 carry? A recorded vote has been asked for.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: That's carried.

Mr Hardeman: A question on procedure: I noticed the calling of the vote. I wonder how many Liberal members we have on the committee voting.

The Chair: We have substitutions here today.

Mr Hardeman: I just wonder if we have the right number voting. I guess the question is, is the minister subbed? Is the minister officially subbed as a member of the committee?

The Chair: Yes, she is.

Mr Hardeman: OK; thank you.

The Chair: Are there any comments or questions on section 5 of the bill? Mr Barrett, did you want to comment on section 5, or can we move on to section 6?

Mr Barrett: Yes, it raises the whole issue of property rights. Anyone who is in the Legislature would know that people in the Legislature representing people in the province of Ontario, and certainly the PC opposition, take property rights seriously, as they're affected, in our view, by this particular legislation.

As we understand it, the individuals, the proponents involved in this dispute, can't seek the remedy of the courts and can't seek legal recourse for any of the disputes involved. To me, that flies in the face of property rights. I know there's a debate whether we actually have property rights in the province of Ontario. I know I introduced legislation perhaps eight years ago to restore property rights to the province of Ontario.

I think we marry this with our perception that this legislation is dumping the rule of law, and perhaps is further evidence that the Premier of this province doesn't understand the basic principle of western civilization: the rule of law. I do recognize that there are a number of dictatorships around the world, but not in this particular province or in the state of Michigan, for that matter. I think Michigan was mentioned across the way. Again, principle holds that a law that is very clear, very public, very predictable, is the basis for our society, not the whim of a Premier or a cabinet minister who doesn't want garbage coming to his particular riding.

I guess, for that reason, we don't have amendments to this section. I know there was a body of opinion on our side that this section should be eliminated from the legislation. However, because it is a violation of the property rights of the proponents, we did discuss striking section 5 of the bill. We are not going to burden this committee with amendments because we're opposed to the bill in its entirety.

1100

The Chair: Mr Hardeman, did you have comments?

Mr Hardeman: I guess my previous comments relate more to this section than to the other section. I apologize, I have to repeat myself.

It really comes, first of all, to the basic fundamental rights that we all have as citizens of this province, and that's the same protection under the law as everyone else. Government has the same responsibility to everyone. If this section is needed—I'm not suggesting it is or isn't—that tells me we are in the process of trying to take someone's rights away, because without this section, we are all concerned that they have rights that we don't want to pay for as a society.

First of all, I want to say I personally, as a citizen of Ontario, don't want to pay millions of dollars to the proponents of this site because we have a government that is making the decision to prohibit the landfill from going there. I don't want to have to pay for that. At the same time, I do think the proponents have the same rights as everyone else, in fairness, to be able to sue the people who are causing this detrimental effect to them.

I think the government realized that when they put this section in here. They realized that without this section, without taking these basic rights away from the proponents, they stand to be at a great financial disadvantage. They see they are taking away a lot of rights that the courts may very well rule are rights that the proponents had, that have been taken away, and that they should be compensated for those rights.

If this wasn't the government, if this was Ernie Hardeman against the developer of the Adams mine site, the McGuinty government or any other government would not be coming forward and saying, "Why don't we pass a law to prevent this lawsuit from ever happening?" They would say, "No, according to the law, this should be decided by the courts, by an impartial third party, as to who is right or wrong and what they should be entitled to, not having one side of the equation decide what the other side of the equation is entitled to. Now tell us how much you think that would be in the carefully defined area that we think is important." I think that's taking away the right that the proponent has under the judicial system, which says that everyone is equal under the law and everyone has the same rights under the law. We are passing a law here that says we're taking it away from the developers of this site. I just don't know how we can do that.

Again, going back to the other part, the presentation we had from the federation of agriculture, if we are doing that on behalf of the government, so they don't have to face this challenge, why are we not including others under the same thing? In fact, it was mentioned that there was a lawsuit presently being either proposed or initiated or considered for initiation against individuals in the area for exactly the same project. I don't know why we wouldn't protect all, if we're protecting the government from it.

Hon Mrs Dombrowsky: I would like to make a brief comment to both of the members' comments. This is an extraordinary section of the proposed legislation. We, as a government, certainly believe in the rights of individuals. We believe that the people of Ontario must be protected, that their water sources must be protected.

One thing I've been struck by so far this morning is that this bill is about ensuring that water sources in a particular community are protected, not just in the Adams mine lake area but also across Ontario. The government has not been convinced that a particular way of managing solid waste would not have a negative impact on source water. It is for that reason that this legislation has been introduced.

There have been extraordinary measures introduced. I would suggest that the government has recognized that in

the subsequent section, to which we will be bringing some amendments.

Mr Marchese: To defend what's happening here, there are times when governments have to act in the public interest and, in doing so, some individual rights that might have been agreed to under a previous government may have to be overridden, which is what this bill does. Governments have a responsibility to protect the public interest. This bill does that, and that's what we should be worried about.

Mr Jeff Leal (Peterborough): I just have a quick question for Mr FitzPatrick. The question of property rights is a bit of a red herring from my perspective. If you go back to the Constitution of 1982, when the Prime Minister of the day put property rights on the table, it was rejected principally by three Premiers—Sterling Lyon of Manitoba, Mr Davis of Ontario and Mr Lougheed of Alberta—because they were concerned that if property rights were enshrined in the Constitution, provincial governments would never be able to expropriate for highways or hydro corridors, or municipalities wouldn't be able to get any roads.

I'm asking you, as a lawyer, to address this red herring that keeps getting thrown out. Ask Mr McMurtry, who was the AG of the day for Ontario and helped to craft the Constitution. Trudeau put property rights on the table, and the Premier said, "Get property rights off the table," because of expropriation, for roads and hydro corridors and other things.

Interjection.

Mr Leal: No, it's not a political question.

The Chair: Would you like to respond, Mr FitzPatrick?

Mr FitzPatrick: I agree with what you said. It is my understanding that in the field of property and civil rights, provincial governments are empowered to do whatever they wish to do.

The Chair: Thank you. Shall section 5 carry? Mr Hardeman, one final comment on this section.

Mr Hardeman: Oh, no, it may be more, Madam Chair. I just want to carry on. Again, I'm not disagreeing with Rosario that sometimes governments have to act in the best interest and protect the interests of the public, but I think this goes beyond that. There's nothing that is inherent in the fact that in order to protect the interests of the public, they have to pass legislation to take rights away from individuals, which is strictly related to money that the government may have to pay.

In my opinion, based on decisions that the government has made, whether we have a change in government or not, government always has to be held accountable for the decisions they have made in the past. A lawsuit that is presently in place, where someone is suing the province of Ontario for an accident that occurred on the 401, doesn't just fall off the table because there's a change of government. This lawsuit is to the government in general. If there is going to be any legal action taken by the proponents of this site, it is against the Ministry of the Environment, not the Liberal government of Ontario.

I think taking away that right is well beyond taking away an individual right to protect the public interest, because I think the public, represented by a Conservative government for eight years and now being represented by a Liberal government, has a responsibility, as well as protection from governments. So whatever decisions were made when the Ministry of the Environment gave all these approvals, we now, as the Ministry of the Environment, have to stand up for the consequences of giving those approvals. I think taking away, in this section, the rights of legal action for any part of it is inappropriate.

This also goes back to that presentation—and I was as impressed as anyone at the committee with the presentation—and the comments that were made from the federation, which said they weren't supportive of this bill because they think the landfill site at the Adams mine should have a new hearing and should be discontinued because of its merits, not for political reasons. I'm not agreeing or disagreeing with that, but that was his opinion. They are of the opinion that the ministry now knows more than they did then, and they don't want to go through the hearing process to find out what they disagree with now that they approved in the past. The federation believed all that should be brought out into the open now. I think this section really takes all this out of the realm and says, "Why don't we just all cover this up, get it over with, avoid as many lawsuits as we can, go on with life and worry about where we're going to dispose of our waste for the next 20 years?"

Mr Marchese: I think we've had a fair amount of debate on this bill in terms of listening to the opposition to this section. We're ready for the vote on this section.

The Chair: I understand that, but I want to make sure everybody has a fair hearing. Mr Barrett still has a comment.

Mr Barrett: Thank you, Madam Chair.

Mr Hardeman: There is no limit on how long we talk.

Mr Barrett: Yeah, there is no limit on how long we talk.

The Chair: Mr Barrett, you have the floor.

Mr Barrett: Just to respond to Mr Leal, who has put property rights in the category of a red herring, I feel very strongly that property rights are important. I feel the rule of law is very important. You made mention of Liberal Prime Minister Pierre Trudeau. In contrast to you, I'm with—

Interjection.

The Chair: Can I stop the cross-dialogue this morning? Can we give Mr Barrett full attention? Good.

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Mr Barrett: I want to make this clear. With respect to property rights, I'm with Pierre Trudeau on this one.

Mr Marchese: That was Mulroney.

Mr Hardeman: Madam Chair, I'm not sure this is relevant.

The Chair: I'm allowing a little latitude. Mr Barrett, you have the floor. You're done? Thank you very much.

Shall section 5 carry?

A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: That's carried.

On section 6 there is a government amendment to subsections 6(1) to (4). Is there a mover for the motion?

Hon Mrs Dombrowsky: I move that subsections 6(1) to (4) of the bill be struck out and the following substituted:

"Compensation

"6.(1) The crown in right of Ontario shall pay compensation to 1532382 Ontario Inc and Notre Development Corporation in accordance with this section.

"Amount

"(2) Subject to subsection (3), the amount of the compensation payable to a corporation under subsection (1) shall be determined in accordance with the following formula:

"A+B+C

"where,

"A = the reasonable expenses incurred and paid by the corporation after December 31, 1988, and before April 5, 2004, for the purpose of using the Adams mine site to dispose of waste,

"B = the lesser of,

"i. the reasonable expenses incurred by the corporation after December 31, 1988, and before April 5, 2004, but not paid before April 5, 2004, for the purpose of using the Adams mine site to dispose of waste, and

"ii. \$1,500,000, in the case of Notre Development Corporation, or \$500,000, in the case of 1532382 Ontario Inc,

"C = the reasonable expenses incurred by the corporation on or after April 5, 2004, for the purpose of using the Adams mine site to dispose of waste, if the expenses are for legal fees and disbursements in respect of legal services provided on or after April 5, 2004, and before this act comes into force.

"Same

"(3) The amount of the compensation payable to 1532382 Ontario Inc under subsection (1) shall be the amount determined for that corporation under subsection (2), less the fair market value, on the day this act comes into force, of the Adams mine site.

"Accounting

"(4) Subsection (1) does not apply to a corporation unless, not later than 120 days after this act comes into force, it submits to the crown in right of Ontario a full accounting of the expenses described in subsection (2), including any receipts for payment.

"Audit

"(4.1) 1532382 Ontario Inc and Notre Development Corporation shall provide the crown in right of Ontario with reasonable access to their records, management staff, auditors and accountants for the purpose of reviewing and auditing any accounting submitted under subsection (4).

"(4.2) 1532382 Ontario Inc, Notre Development Corporation or the crown in right of Ontario may apply to the Superior Court of Justice to determine any issue of fact or law related to this section that is in dispute."

The Chair: Is there any discussion?

Mr Marchese: I would like the legal counsel here to comment on the effect of the changes by the amendment versus what is in the bill, as it relates to sections 2 and 3.

Mr FitzPatrick: The changes will bring about a split so that the compensation will be split between the numbered company and Notre Development, instead of all going to the numbered company. Each of the companies will be compensated for their own expenditures. The numbered company is now the registered owner of the land, so fair market value of the land which they will retain, as evaluated on the day the act comes into force, will be deducted from the compensation payable to the numbered company.

Mr Marchese: Speak into the mike so we can hear you.

Mr FitzPatrick: Sorry. In the case of item B, there will now be an amount payable with respect to expenses incurred but not yet paid. As this could possibly amount to a large amount of money, there are now limits placed on those amounts that are incurred but not yet paid: \$1.5 million in the case of Notre Development and \$500,000 in the case of the numbered company.

Mr Marchese: OK. Thank you.

Mr Hardeman: First of all, I too have a question on the changes that are being proposed here. To me, the biggest change is that you're putting upper limits on total expenses. Is that true?

Mr FitzPatrick: No. We are putting upper limits only on expenses that have been incurred but not yet paid, so that if an order had been placed for a piece of equipment such that Notre Development incurred a cost of \$10,000 that they must pay at some time, they could be reimbursed for that, even though they do not pay that cost until some later time. It is those things that have been—

Mr Hardeman: The follow-up question wouldn't be a legal one; it would be more to the minister. What would be the justification for suggesting that we are going to pay, as a province, for those expenses beyond that point, from the time the bill was introduced until 120 days after the bill is proclaimed, but just in case they're higher than we think they are, we're not going to pay for them all? How could we as a province make a decision that we're going to set limits on that? If there were expenses, there were expenses; if they're not, they're not; and if we should pay for them, we should. I don't know how you can divide the moral obligation with a ceiling. I guess that would be the question: How would we justify having a ceiling there, if you've identified what they are?

Hon Mrs Dombrowsky: Mr FitzPatrick has indicated he would be able to respond to this.

Mr FitzPatrick: Items A and B relate to expenses incurred before the bill came into force. They don't relate at all to expenses that might be incurred today or after the bill is passed. The limit was imposed as a matter of caution with respect to expenses that were incurred but have not yet been paid. The limits were selected because, in the weeks since the bill was first introduced, we have come to a somewhat better understanding of the amounts and the relationship between the numbered company and Notre Development.

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Mr Hardeman: In developing that number, do you have some reasonable assurance that that would be an appropriate ceiling?

Mr FitzPatrick: For that item, yes.

Mr Hardeman: The other thing, and I kind of mentioned it in the other question: With all these legal things that are going to happen or have happened—it was presented to us that there were some other lawsuits ongoing concerning the site and its approvals—is the government looking at all that, making sure others are held harmless too? As we are protecting the general taxpayers, are we protecting individual taxpayers of the area for their lawsuits? I think it was mentioned that the federation of agriculture could be on the hook for \$10 million. Is that going to be addressed?

Hon Mrs Dombrowsky: That is not in this legislation.

Mr Hardeman: So the government, in this bill, although they're very anxious to make sure we're serving the interests of the people of Ontario, doesn't think that should go to the individuals who were involved in getting us to this point, shall we say? Obviously, if it hadn't been for their efforts, it's reasonable to assume that you would not be in the position you are in today. But they should be held accountable for those now and be liable for all those costs themselves, because as a government you don't care?

Hon Mrs Dombrowsky: This bill is about compensating the proponent and the owner of the Adams mine site.

Mr Hardeman: Madam Minister, this bill is not about compensating the owners of the Adams mine site, as you just suggested. My interpretation of this bill was that it is to stop waste from ever being deposited at the Adams mine site.

Part of that has been a 12- or 15-year process that has involved a lot of people who were doing the heavy hauling when you were not the minister and even since you've been the minister. I guess we're going to have to assume they were the ones who presented you with the scientific evidence that you should introduce this bill. But now you're saying you're willing to cut them loose because you've accomplished what you want for the government, and "individuals in the area are not important, so we won't worry about what's going to happen to them after the fact."

In fact—and these aren't my words; this is what was presented to us at the hearing in Milton from the federation of agriculture—they were very concerned. They didn't want the bill passed because of that concern. So I think it's important that we at least get on the record that you're suggesting the individuals are not important and the public interest overrides individual interest.

Hon Mrs Dombrowsky: Nothing could be further from the truth. The purpose of this bill and this particular section is to recognize that there have been companies that have received permits from the provincial government to move forward on an initiative. Since this government has made a determination that we do not believe it is in the better interests of the people of Ontario for this project to proceed, we are prepared to compensate that company for its out-of-pocket expenses.

I would suggest to the honourable member, if he so wants to advocate on behalf of the presentation he heard, why didn't they bring amendments to this section?

The Chair: Mr Marchese has the floor.

Mr Hardeman: Madam Chair, I take exception to that. My intention is not to make amendments to this bill, because I think it's a bad bill. I don't think it can be amended to deal with one issue. I think just giving everybody enough money to go away is not the appropriate way to deal with this matter.

The Chair: Mr Hardeman, can I ask that you speak just to the amendment, please, and not get into debate with the minister on this issue. I think she has responded to your comment.

Mr Hardeman: I was doing that, Madam Chair.

The Chair: Thank you.

Mr Hardeman: I was speaking to the minister's comments.

The Chair: I understand. I sense we're going down the argumentative route. At this point, speak to the amendment, and if you do have another comment or a question—

Mr Hardeman: No. I just wanted to say that when the minister makes comments impugning my motive as to questioning it, then I have every right to respond to that comment. I think that's exactly what I did.

My concern, really, as the minister suggested, is that this bill was to stop waste, and I think she's conceded the bill was to stop the waste from going to the Adams mine. As we look at what impact that will have on the area and the people of the province, individually and collectively, I think it's important that the minister deal in the bill with all those issues: not just with the ones that are most likely to be in court to try to sue the province, but all those people who will be impacted by this bill.

The federation made a very good case, saying that they were going to be impacted, and are being impacted, by the lawsuits that will evolve when this bill is passed. Then the only ones there to defend the Timiskaming Federation of Agriculture will be the federation, because the minister has said, "We have covered our ass, so we don't need to go any further." That's a real concern to me.

Mr Marchese: Just out of curiosity, monsieur l'avocat, how do you come up with the numbers that are there: \$1.5 million and \$500,000? Is there a rule that you apply to this?

Mr FitzPatrick: No. The numbers were arrived at in consultation with representatives of the Adams mine project.

Mr Marchese: Is there a formula or just a discussion about expenses incurred?

Mr FitzPatrick: Just a discussion.

Mr Marchese: So you arrive at that number by reviewing their books, basically, and maybe you say, "I think we've got a balance here." Is that the idea?

Mr FitzPatrick: Once again, we're speaking only about expenses incurred but not yet paid.

Mr Marchese: Right, since there was an announcement that the bill would be introduced or after?

Mr FitzPatrick: All these expenses are expenses that happened before the bill was introduced.

Mr Marchese: Ah, but not yet paid.

Mr FitzPatrick: Expenses that have been paid will be compensated.

Mr Marchese: Right. But my main question was—

Mr FitzPatrick: These expenses which have been incurred but not paid are limited by these numbers on the advice of representatives of the Adams mine—

Mr Marchese: On the advice of—

Mr FitzPatrick: —that these are appropriate numbers.

Mr Marchese: So you presented the numbers, and they said "OK." Is that basically the way it works?

Mr FitzPatrick: It was an exchange.

Mr Marchese: But there must be some thought about how one arrives at a certain number, isn't there?

Mr FitzPatrick: The notion that there should be some limit was presented to the representative of the Adams mine. He suggested that these were appropriate limits.

Mr Marchese: I understand that. I understand the notion of limits, and I was asking you how you arrive at a figure. I'm not understanding how one arrives at a certain figure, other than that a figure was thrown out and the Adams mine people said, "Yes, that seems OK."

Mr FitzPatrick: Exactly.

Mr Marchese: That's it?

Mr FitzPatrick: An acceptable figure.

Mr Marchese: But it won't be necessarily \$1.5 million. It'll be based on whatever it is we are going to—

Mr FitzPatrick: That's quite correct, but it will not exceed that.

Mr Marchese: It won't exceed it but it could be less, based on whatever numbers they present to you.

Mr FitzPatrick: Correct.

Mr Marchese: Have you had a chance to review some of those numbers, or not yet?

Hon Mrs Dombrowsky: Not yet. However, I would like to share with the member that whatever will be paid in this venture, if the bill is passed, will be available to the public. That information will be public information.

Mr Mario G. Racco (Thornhill): I wonder if the minister could potentially reassure me. My understanding

is that we are trying to make sure every expense incurred prior to reintroducing the bill—we are prepared to pay those expenditures, within reason. Yet the PCs keep on insisting, and I read from what they're asking, that there is a perception that in fact we are not going to pay those expenses. Can you assure me that we are prepared to pay all those expenses unless some of them are questionable in nature? Could you do that, please?

Hon Mrs Dombrowsky: I can assure this committee that compensation is assured with this legislation for both the numbered company and the corporation that received approvals from this government for its business venture.

Mr Racco: So you will be paying those.

Did you also say a minute or two ago that the Adams mine group reviewed the dollars and they are in favour? Is that what you, or your assistant, said?

Hon Mrs Dombrowsky: I believe the information that's been provided is that in order to arrive at what would be a reasonable amount, there has been a dialogue between a representative from the corporation and the numbered company. I believe there is agreement that those are reasonable ceilings.

Mr Racco: So then the people interested in this matter have agreed with the numbers you are prepared to pay.

Hon Mrs Dombrowsky: Those who have had direct business with the government on this file, yes.

Mr Racco: Thank you.

1130

Mr Barrett: This amendment on compensation—there's a section on compensation, section 6. Section 5 discusses compensation as well. It's regrettable. I understand this is probably the first Liberal environmental bill that's ever been brought forward in Ontario. I know other legislation—PC legislation or NDP legislation—has been amended by the previous Liberal government, but I find it a little sad that we're discussing compensation and we're not discussing recycling, diversion, the search for landfill and what have you. Granted, the words "waste disposal" are contained in this legislation, but I'm not sure if it's maybe your crowning moment to have this as the first piece of your own legislation as Liberals in the province of Ontario.

I guess the problem is, why are we talking about compensation again? Because the rules were changed. They were changed retroactively. The applicants were successful over a number of years, and now we're taking the rules back six years to 1998. We're changing the rules. We've essentially changed the property rights of the proponents. As I understand it, they have lost the fundamental right, which all of us have in the province of Ontario, to go to court.

I feel uneasy or reluctant to be sitting here, almost as judge and jury, discussing the lesser of \$1.5 million for Notre Development and \$500,000 in the case of the numbered company. I don't feel comfortable being judge and jury on these dollar figures that weren't in the original legislation. I understand these dollar figures have just been presented today. I hope you have talked to the proponents. This seems very unusual.

My only request is—

Mr Marchese: She said they did.

Mr Barrett: OK, then, could Notre approach the witness table and give us their side of the story, or do they not have the right to talk about these dollar figures? I don't have the bills. I don't have the receipts. I don't want to be in a position of negotiating this deal.

Hon Mrs Dombrowsky: That's not what clause-by-clause is for, Toby. You know that.

Mr Barrett: I've made this request. I suppose I could ask for unanimous consent, because I did see nods from the other two parties.

I understand one of the proponents is sitting here today. I don't feel comfortable talking about \$1.5 million, \$500,000 here. I don't have the receipts. I'm not going to pass judgment on that one.

The Chair: I think it would be difficult to provide you with a complete picture of what compensation has been, since not all the parties are here today. So I would say that I won't honour that request today. I don't know if the minister wants to respond to this comment.

Hon Mrs Dombrowsky: No.

The Chair: OK. Now I'm prepared to put the question on the amendment to 6(1) to 6(4) before the committee. A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco.

Nays

Barrett, Hardeman.

The Chair: The motion is carried.

Again, on section 6, there is a government amendment to subsection 6(7). Is there a mover for the motion?

Hon Mrs Dombrowsky: Madam Chair, did you want to do 6(5) and 6(6), or will you do that after—

The Chair: We'll complete it at the end. We'll just do the amendments now.

Hon Mrs Dombrowsky: Madam Chair, I move that subsection 6(7) be struck out and the following substituted:

"Reasonable expenses

"(7) For greater certainty, subject to subsection (8), a reference in this section to reasonable expenses incurred for the purpose of using the Adams mine site to dispose of waste includes reasonable expenses incurred for that purpose for,

"(a) seeking to acquire and acquiring the Adams Mine site;

"(b) surveys, studies and testing;

"(c) engineering and design services;

"(d) legal fees and disbursements;

"(e) marketing and promotion;

"(f) property taxes;

"(g) seeking government approvals; and

"(h) seeking to acquire the lands described in schedule 1.

"Same

"(8) For greater certainty, a reference in this section to reasonable expenses,

"(a) does not include any expense that exceeds the fair market value of the goods or services for which the expense was incurred; and

"(b) does not include any expense for which 1532382 Ontario Inc or Notre Development Corp has been reimbursed by another person."

The Chair: Thank you. Are there any questions or comments?

Mr Hardeman: Just a very quick question. First of all, I'm trying to understand this, and maybe it would be easier if somebody could give me an example or two of what wouldn't be included, because this seems like quite an exhaustive list as to what we've included. The list is so exhaustive that it would be hard to believe that we're trying to define what is included, rather than trying to point out what wouldn't be included. I'm just wondering if someone could give me what somebody suggested should be on the list and isn't.

Hon Mrs Dombrowsky: I would only offer that I believe in our attempt to be as fair to the corporations as possible, we've tried to present an exhaustive list of reasonable expenses that could and should be considered if the bill is passed.

Mr Hardeman: I guess I need clarification. If I look at (h), the cost of "seeking to acquire the lands described in schedule 1," is that definitive? How would we define the cost of doing that as we were looking into purchasing the site? Was that three years of looking into the possibilities? Why are we defining that item, and what does it mean when I read that?

Mr FitzPatrick: The lands in schedule 1 are lands adjacent to the Adams mine site, and the costs involved might have been for things like surveys and legal fees, things like that.

The Chair: I will now put the question on the amendment to 6(7). Did you have more questions, Mr Hardeman?

Mr Hardeman: Yes. I'm wondering again on the definition under "Same (8)(a) does not include any expense that exceeds the fair market value of the goods or services for which the expense was incurred," what does that mean?

Mr FitzPatrick: It's simply an attempt to illustrate what we mean by "reasonable expenses." So if a payment were made for something and the payment far exceeds the actual value, we would not repay that.

Mr Hardeman: But I guess my question, really, would be, when the bill is produced for the service, wouldn't that automatically be a reasonable market value? Isn't that how you would define the market value? Why would you say, "We won't pay it because it's too high; somebody else would have done it cheaper"? "Reasonable expense" is one thing, but then to say you also have to identify it as a value for money before you

can turn your bill in—maybe the proponent made some bad deals and paid some consultants too much money. That happens from time to time. Is the government now going to say, “You don’t get paid for that consultant because somebody would have done that job cheaper. That’s above market value”?

The Chair: Mr FitzPatrick, did you want to respond to that question?

Hon Mrs Dombrowsky: If I may, we are managing taxpayers’ dollars, and we want to ensure that any expenditures are made reasonably and that if a fair market value for a survey—and I’m taking the numbers out of the air, please understand. If it’s in that area, it would be fair to assume that a survey could be had for \$5,000, and if a bill would be submitted for \$15,000, that would not be seen as reasonable. The province wants to compensate for expenses, but we also want to be sure that we are expending taxpayers’ dollars reasonably.

1140

Mr Racco: I suspect that what you’re also saying in this section is that if somebody hired to do the job was paid significantly higher than what is reasonably expected, they would only get the reasonable amount. That’s what you’re saying.

The last section: If you can give me an example, otherwise it’s fine. The last words say, “by another person.” Can you give me an example of that or not, or do you want me to read it all? I’m just trying to think what that could be.

Mr FitzPatrick: The primary reason for that is because of the relationship between Notre Development and the numbered company. Notre Development started this project and the numbered company acquired certain rights and the ownership of the site in the last few years. It may be that the numbered company has reimbursed Notre for some of the things they previously expended. This would avoid double payment.

Mr Racco: It would pay one party, not both.

Mr FitzPatrick: Exactly. It may be that there are other examples.

Mr Racco: That’s fair. Thank you.

The Chair: I will now put the question on the amendment to subsection 6(7) on the floor. A recorded vote has been requested.

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco.

Nays

Barrett, Hardeman.

The Chair: The motion is carried.

There being no further amendments to section 6 before the committee, I will now put the question. A recorded vote has been requested. Shall section 6, as amended, carry?

Ayes

Dombrowsky, Leal, Marchese, Mauro, Milloy, Racco.

Nays

Barrett, Hardeman.

The Chair: That’s carried.

On section 7, there is a government amendment to subsection 7(1). Is there a mover for the motion?

Hon Mrs Dombrowsky: I move that subsection 27(3.1) of the Environmental Protection Act, as set out in subsection 7(1) of the bill, be struck out and the following substituted:

“Lakes

“(3.1) Despite subsection (1), no person shall use, operate, establish, alter, enlarge or extend a waste disposal site where waste is deposited in a lake.”

The Chair: Any discussion? Mr Racco?

Mr Marchese: Mr Marchese.

The Chair: Sorry, I looked at him. Mr Marchese, I apologize.

Mr Marchese: Could you again, monsieur l’avocat, explain the difference, because there appears to be a difference between the two. One says “where waste is deposited in a lake,” and the other “if any part of the site is located in a lake.” There is a substantial difference between the two. Could you explain the significance?

Mr FitzPatrick: The amendment will focus on what was our intention, and that was to prohibit the placement of waste in a lake. As originally drafted, it would have gone beyond that and prohibited the use of a waste disposal site if there was, for example, a large pond used for storm water management or possibly a lake at the far end of the site that was not involved at all with waste management operations.

Mr Marchese: OK.

Mr Barrett: We have a further motion. I haven’t heard an explanation of this motion. You read the motion, but could we have an explanation of the motion?

The Chair: An explanation has been requested. I think it was just given, but you were—

Mr Barrett: The minister explained it? Maybe I missed that.

The Chair: No, it was just explained while you were talking. Mr Marchese asked that question. Could you repeat it, please?

Mr Barrett: I’m sorry, who—

The Chair: Mr FitzPatrick will answer it.

Mr Barrett: I see. You made an explanation of the motion?

Mr FitzPatrick: The amendment will focus this prohibition, as we originally intended, on the placement of waste in a lake. The version that is in the bill now is broader than that and would prohibit the use of a waste disposal site if there were, for instance, a large pond used for storm water management purposes, or even if there

were a lake at the far end of the site not involved at all with waste management.

Mr Barrett: We know from testimony—the Canadian Environmental Law Association raised the issue—that if the legislative intent is to prohibit landfills in manmade bodies of water then, in their view, the bill's definition is adequate. We now have an amendment that changes the definition of a lake, if I'm clear on this. CELA indicated in testimony that if the legislative intent is to prohibit landfills in all bodies of water, whether they're natural or artificial, then the definition should be broadened. I'm not sure if this amendment meets their criteria to broaden the definition of a lake or a landfill. They suggested that a lake means any natural or artificial body of water, river, pond, stream, creek, brook, spring, reservoir or other watercourse, and includes the beds of such bodies of water.

I guess my question, perhaps on behalf of CELA, the Canadian Environmental Law Association, is, is this amendment in a sense a change in the definition of the lake in section 7? Is this adequate, from their perspective? I always used to know what a lake was, but we're redefining and redefining. I think we made mention of irrigation ponds, which are very important down in my neck of the woods.

Mr FitzPatrick: I will admit I've had some difficulty understanding their criticism. Lake means lake, just as you said. It is only for the purposes of this section of the Environmental Protection Act that we have expanded the meaning to include manmade bodies of water. Otherwise we have not affected, in any way, what the normal meaning of lake is.

Mr Barrett: OK. Going back to the big picture, which, unfortunately, doesn't really come up in the legislation, but even with respect to this issue, we're talking about potential contamination of groundwater, surface water, aquifers—source protection by extension. We heard testimony in Milton that—these weren't my words—leachate in Adams mine potentially would be causing problems for 1,000 years. By extension, if you buy into that, we do have other sites, other lakes, by this definition, that do contain landfill. For example, I think of the cleanup of various hot spots in the Great Lakes. In my riding, for example—I think it was the Edwards landfill in Haldimand. A certain landfill has been removed from that site because it was deemed inappropriate and it's being used for construction waste.

This legislation, in my mind, opens the door for Love Canal-type cleanups on all the other newly defined lakes that have contained garbage and potentially are going to leach into the water table for the next 1,000 years. Is that where we're heading with this, Minister? Because water is water. An aquifer is there, whether garbage is going to be put in it in the future or was put in it in the last several years. Does this legislation now open the door to clean up these other—I won't use the term "hot spots," but to clean up past Adams mines—garbage in lakes?

Hon Mrs Dombrowsky: I must confess I have some difficulty tracking the question, as the member meanders

through a variety of scenarios and examples. This legislation is intended to protect the people of Ontario, to ensure that their water sources are protected. We believe that placing landfill in bodies of water can potentially expose the water sources in communities. The intent of this amendment is to clarify where in fact, anywhere in the province, landfill material will not be deposited in a lake. That is the intent of the clarification of this section.

1150

Mr Barrett: In the examples I used—it may be Marathon harbour on Lake Superior or Wheatley or Leamington on Lake Erie where mistakes were made in the past—there is product in the sediment. There has been a movement to remove that sediment. We have now identified, through this legislation, that lakes are not to receive garbage or landfill. In the past, landfill has been put into pits and quarries and mines. That product is in there. It is exposed to the aquifer. It is exposed to the groundwater.

In the spirit of this legislation, are we going to be considering excavating that product from other sites? The evidence here seems to indicate that leachate goes into the water table. This is all about water, in my view. I know much of the discussion has been around property rights and compensation, but from an environmental perspective, do we let this lie?

Hon Mrs Dombrowsky: The intent of this legislation is to protect water sources in Ontario. The intent of this amendment is to ensure that a waste disposal site will not deposit waste in a lake in Ontario.

Mr Leal: Indeed, this section is about protection of water resources. If you think of a landfill, the way landfills are developed in Ontario today, you have a footprint of a landfill, and then within the footprint of the landfill, you actually have the fill area. The fill area, of course, is always much smaller than the footprint. In the footprint of the landfill, you often have a detention pond which collects the water that you eventually pump out so that water doesn't leach into the fill area creating a leachate problem.

I'm surprised my friends across the aisle haven't picked up on that. If they've toured any landfill sites in southern Ontario in the last little while, that's exactly the way they've been established.

Mr Hardeman: Just in clarification directly to the amendment, my understanding—and correct me if I'm wrong—is that the previous legislation was that there could be no identified lake, man-created or otherwise, on a landfill site. So if the owner of the site owned 50 acres, and that 50 acres contained an identified lake, then you couldn't have a landfill site on it.

This amendment changes that to the fact that you could have a lake—in fact, you could have a group of lakes—and right in the middle of it could be your approved site, and as long as you didn't deposit waste in the lake, that could be approved. Is that correct? Is that how I can interpret this amendment?

Mr FitzPatrick: That's correct. The director would have to make a decision on—

Mr Hardeman: Going back to Mr Barrett's comments about the environmental association, they wanted it clarified that we were going to be more restrictive, that we include more bodies of water, such as rivers, streams and lakes that may not quite be the full size—the two and a half acres or whatever it is—that we have to have. They thought they should be included in any way; that the landfill was going to contaminate the groundwater. This is really taking us, in fairness, in an opposite direction to what they suggested. Is that not right?

Hon Mrs Dombrowsky: In my opinion, that would not be accurate.

Mr Hardeman: I hate to argue with a minister of the crown, but this amendment does make landfilling more likely in areas where there are bodies of water. In the original bill, you could not have a lake anywhere on the site and have a landfill site on that same piece of property. With the amendment, you can have a landfill site on the same piece of property that you have a lake. That, to me, makes it more likely to have landfills close to bodies of water. It doesn't make it so; it just makes it more likely. Is that not right?

Hon Mrs Dombrowsky: Depending on the size of the site and so on, that is a possibility. It's important to recognize that one of the reasons this amendment is being considered is that there are many landfill sites that also manage their own waste water. Their concern was that those storm water ponds could be considered lakes. For that reason, we believed that we needed to be more clear in terms of the intent of this legislation, and that is to ensure that henceforth no garbage will be placed in a lake in Ontario.

Mr Hardeman: First of all, though I disagree with the whole bill, I want to say I agree with the amendment to the extent of what it would accomplish if I thought the bill were the appropriate thing to do.

I don't know how the minister can suggest that this amendment doesn't make it more likely to have landfills closer to bodies of water. If you're going to use the argument that this is only to deal with storm water management on landfill sites, why would the amendment not speak to storm water management bodies of water and separate them from lakes and just deal with those? This amendment makes it more likely to have landfill sites closer to bodies of water than the original bill. So from an environmental point of view, I don't know how one could support this amendment.

Hon Mrs Dombrowsky: In terms of whether a landfill would be sited within proximity of a lake, that reality would be determined through the environmental assessment process. The honourable member should know that is the process in Ontario and that any proposed landfill that could potentially impact a lake or a river, as was referenced with the CELA presentation, would all be considered during the environmental assessment.

The Chair: Thank you, Minister.

Mr Hardeman: Madam Chair, this speaks directly to the bill. Again, using the analysis that I should know that all these things will be dealt with in an environmental

hearing is very good news for me, but it doesn't do much for the people who own Adams mine. They went through all that process, had it all approved by the ministry and now find that the ministry changed its mind. I just want to make sure that this isn't going to encourage a lot of people to apply and then have it turned down and they say, "You should have known that we really didn't want it anywhere near a lake."

The Chair: Mr Hardeman, could I ask you to speak just to the amendment, please. That's all that's in front of us right now.

Mr Hardeman: Madam Chair, I don't know how much closer to the amendment I could get when I'm talking about what the amendment does. Let's be fair and honest here. I'm talking about, this amendment putting landfill sites closer to lakes.

The Chair: I know, and I would like you to be specific rather than—

Mr Hardeman: I can't be specific because I can't get specific answers. I want it to be more general, because it seems we're having a problem with the minister understanding what the amendment does.

The Chair: With respect, I think the minister does understand, and you do, but you disagree on what the interpretation is.

Mr Hardeman: No. Madam Chair, again—

The Chair: Could you ask direct questions or make a statement, and then we'll move on. You have the floor.

Mr Hardeman: I'm not going to suggest that the Chair, the minister or even myself doesn't understand it. Of the three, likely I am the least understanding of the three. But the minister has made it quite clear in her answers that she does not believe that this amendment would be more likely to have landfill sites closer to bodies of water that she's defining as lakes than the bill the way it is presently written. If that is not the case, then I see absolutely no reason for this amendment. I think that's exactly why this amendment is before us, so in places where there are large bodies of water on the site or storm water management ponds—whatever—if there are bodies of water that are not going to be impacted directly by the landfill, they would still be considered for landfill areas.

Under the present bill, that is not allowed. The present bill is quite clear that if it contains a lake on the site, that site would not be considered for landfill; don't even ask. The amendment says, provided the site with the lake has a good corner on it for landfill, you can go ahead and apply.

The Chair: Thank you, Mr Hardeman. I will now put the question on amendment 7(1). Did you have another question?

Mr Barrett: Yes, thank you. Further to the amendment to section 7, we understand the reality is that the government of Ontario—and certainly this is becoming very clear through this legislation—is the regulator. The government of Ontario makes the ultimate decisions on where and when landfills are implemented and makes decisions whether existing landfills or—

Mr Marchese: Merciful lord, it's the bell.

Mr Barrett: Are we done?

The Chair: If you'd like to finish your comments, we could finish this section, if it's the will of committee, or we could plow through and perhaps be finished and not come back at 3:30. It's the decision of the committee. Do we want to come back at 3:30?

Mr Barrett: Is this a five-minute bell?

Mr Hardeman: It's a five-minute bell. They must go and vote.

The Chair: I'd be happy to recess, if you want to complete your comments.

Mr Hardeman: It's not a choice whether we sit during the bells ringing.

The Chair: I understand that. I'm trying to be courteous to the speaker. Would you like to finish your comments, Mr Barrett, or would you prefer to make them later?

Mr Barrett: I can wrap up when we come back.

The Chair: Thank you. We'll recess. We'll be back at 3:30.

The committee recessed from 1201 to 1552.

The Chair: I'm going to call this meeting to order. I'll now put before the committee the question that we were dealing with prior to recess, and the question was on the amendment 7(1). We were asked for a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

The Chair: Anybody opposed? No? The motion is carried.

There being no further amendments to section 7 before the committee, I will now put the question before the committee. We've been asked for a recorded vote. Shall section 7, as amended, carry?

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

The Chair: Section 7 is carried. Are there any comments or questions on section 8 of the bill? Any questions on section 9? We could possibly do them together, or did people want to comment on either of those sections?

If not, shall sections 8 and 9 carry? We have been asked for a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Mr Marchese: You're against.

Mr Barrett: I'm not aware of what we're doing.

The Chair: That's carried.

Are there any comments or questions on schedule 1 of the bill? If not, shall schedule 1 carry? Since we've been asked for a recorded vote—is there a request for a recorded vote on the schedule, Mr Barrett?

Mr Barrett: Yes.

The Chair: This is a recorded vote on schedule 1.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: That's carried.

On the issue of the title carrying, shall the title carry? This is a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Shall the bill, as amended, carry? This is a recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett, Hardeman.

The Chair: Shall I report Bill 49, as amended, to the House? Recorded vote.

Ayes

Cansfield, Leal, Marchese, Mauro, Milloy, Racco, Wilkinson.

Nays

Barrett.

The Chair: That's carried.

This concludes the committee's consideration of Bill 49. I'd like to thank all of my colleagues on the committee for their work on the bill. The committee also thanks the ministry staff and the members of the public who have contributed to the committee's work.

The committee is now adjourned. Thank you.

The committee adjourned at 1556.

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Thursday 17 June 2004

Journal des débats (Hansard)

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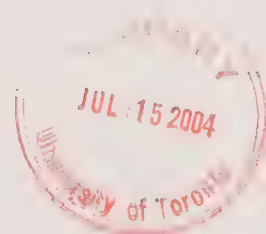
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 17 June 2004

Jeudi 17 juin 2004

The committee met at 1542 in committee room 1.

ELECTION OF CHAIR

Clerk of the Committee (Mr Doug Arnott): Honourable members, it is my duty to call upon you to elect a Chair for the committee from among yourselves. Are there any nominations, please?

Mr Bob Delaney (Mississauga West): I nominate Linda Jeffrey as Chair.

Clerk of the Committee: Are there any further nominations, please?

Mr Ernie Hardeman (Oxford): For the sake of providing the opportunity for everyone to put on a campaign for the leadership of this great committee, I think it would be inappropriate to just nominate one and then have an immediate election. Maybe I should nominate Rosario, but I think it's a foregone conclusion. We've had such a good Chair in the past that I don't think anyone else could challenge that. So I will not make any further nominations.

Clerk of the Committee: Are there any further nominations? There being no further nominations, I declare Mrs Jeffrey elected Chair of the committee.

ELECTION OF VICE-CHAIR

The Chair (Mrs Linda Jeffrey): Thank you, committee. We have the election of the Vice-Chair before us as our first order of business. Are there any nominations?

Mr Kim Craitor (Niagara Falls): I'm pleased to put forward the name of Mario Racco as Vice-Chair of this committee.

The Chair: Are there any other nominations? All those in favour? That's carried. Congratulations, Mr Racco.

APPOINTMENT OF SUBCOMMITTEE

The Chair: We need to appoint our subcommittee on committee business.

Mrs Donna H. Cansfield (Etobicoke Centre): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee be necessary to constitute a meeting; and

That the subcommittee be composed of the following members: the Chair of the committee as Chair, Mr Hardeman, Mr Marchese and Mr Sergio; and

That substitution be permitted on the subcommittee.

The Chair: Any discussion? Seeing none, all those in favour? It's carried.

Our agenda today is a special one. We have the Ombudsman here, but before we begin with the Ombudsman, I would beg indulgence of the committee to do a little bit of business prior to that so we can devote all our attention to Mr Lewis's report.

One of the issues on the agenda is the report to the House on assignment of ministries and offices. It's item 5 on your agenda. Is there any discussion on that item, or can we move that we receive it—move receipt, and we will be presenting it to the House? Can I have a mover? Mr Hardeman has moved receipt.

Is that carried? Thank you; that's carried.

The only other item we have, because we have a couple of new members, as a courtesy, is with regard to the NCSL annual meeting. We did distribute the information about the conference. We were offering members of the committee an opportunity to attend it. Members were canvassed, but because we have some new members, it would be fair to offer those new members an opportunity to have a look at the materials and perhaps canvass them in the interim, send those requests to subcommittee, and if we could authorize the subcommittee to then present the request and a budget submission to the subcommittee on committee business.

Any discussion? That's carried. Thank you very much.

OMBUDSMAN'S REPORT

The Chair: Our next item is one we've all been looking forward to: the report of our Ombudsman. Mr Clare Lewis, you have the floor.

Mr Clare Lewis: Thank you, Madam Chair and members of the committee. Congratulations to the new members. May I say that having watched the federal debate on Tuesday evening, it's a great pleasure to see the lack of rancour in the election process here today.

I am very pleased to have you do me the courtesy of receiving me today. I believe each of you has a copy of my report, and the addendum report, which is our special

report on autism, which I also delivered to the Speaker this morning for the Legislative Assembly.

In the back of the report you will find a CD-ROM. The CD-ROM has the report in English and French. It has the autism report in English and French. It also has a riding report for your purposes. A few years ago I had some inquiries from members as to what the complaint trends were in their ridings. I thought, if they want to know, that I'd do it across the board, so we now provide you annually with that information and it's on the CD-ROM. You can look at it and you'll see what ministry programs your constituents are concerned about or are raising complaints about. If you have any questions, not only today but subsequently, or your constituency officers do, I'm certainly available to answer any questions you may have.

This is my fifth and final report. As Madam Chair knows, I held a press conference this morning with regard to it and went on and on, and I'll try not to do it to you. But I wanted to repeat something I said this morning because to some degree I see this report as a celebration of my staff and the work they have done with me for the past four years. As I said also, I don't know what will happen in the next seven months, and it can all go sour, but they've come a long way and a lot of good has been done.

Every photograph on the front is a member of my staff and every photograph inside is a member of my staff. They are not stock photos.

What did we do this year? We've gone about as far I think I can go in retooling the office internally. I don't think there's an awful lot more I can offer there as a change agent so it's probably a good time for me to move on. But I'm able to report at this stage—and I could not have done so when I first appeared before the committee in January 2000—that the relationship of this office with the Legislative Assembly on the whole is cordial and is positive. With the committee, I hope that's again the case.

1550

With government itself and with the public service, as I told the deputy ministers when I first met with them in January 2000—and I may have mentioned this to you the last time—I'm not interested in "Gotcha"; I'm interested in results. I think we've worked to that end positively on the whole throughout the past four years. I've only been before this committee once to argue a case, because I only felt the need on one occasion. We either were able to resolve it, or I didn't think that my assertions were worth troubling you with and raising it to the level of the Legislative Assembly. On the whole, it's because we've had sufficient response.

A good example of that is the autism report itself, which is actually framed in a form that would be a prelude to coming here to do battle. I wasn't initially satisfied with responses, but they came to a level that I felt was the best I could achieve. The ministry has recognized deficiencies in the planning for the autism program. They have taken and are taking positive steps. Our office will

monitor the implementation of those steps, but, as I mentioned this morning at the press conference, this is a very important and difficult item for government—whatever government.

Autism became a very real issue for governments in the late 1990s. There was little knowledge as to the degree of the condition and what was involved. The last government responded to the very strong wishes of parents for treatment. It's not part of the health ministry agenda; it's children's psychological stuff and it's just not covered by that, as most children's mental health issues are not, so the government responded. But the public was led to believe, just through the ministry's first public statements, that they were going to be able to treat all children suffering from autism. The problem with that is, they didn't know what "all" was. That's not even certain today, but it was an awful lot bigger than was originally assumed.

The autism report is symptomatic of the approach I took this year, which was to use my own motion authority. We cranked on day by day solving individual complaints, or rejecting them, as the case may be, but resolving a great many successfully. We found opportunity to do these own-motion investigations which suck up the individual complaints and approach systemic problems in a way that we hope, in the future, will reduce the complaint loads. We tried to get to the roots of the problems.

In autism we took a very narrow approach because two major issues are being litigated today in the superior courts. The Supreme Court of Canada, last week, was hearing the arguments on autism out of British Columbia, with Ontario intervening against the applicants. That's a case which is designed to determine whether the court can tell government how much it has to fund for autistic treatment. First of all, is it to be covered by government and, if so, to what degree? There are some huge issues there for governments, and that's one part of the argument.

In Ontario, the issue that's being disputed in our superior courts is whether the program must be offered after age six. Generally speaking, it has been argued by many health experts, and certainly by governments who offer treatment, that the resources are best used and the training is best successful when the child is under six years of age, preschool. So that's—

Interruption.

Mr Craitor: That happens all the time.

Mr Lewis: Something I said? It's a pretty raucous group after all.

Those two big issues are being litigated. I didn't think it was appropriate for me to get involved. The courts are better suited, and anyway, they can make orders and I can only recommend.

What concerned me were the delays and the waiting lists for children who were eligible to get service. We looked at the whole thing from the point of view of why that is the case. Our findings were essentially that originally the Ministry of Community and Social Services had

not adequately planned its approach and they did not have the persons trained. It's important to understand the ministry doesn't provide the service; the ministry provides the funding and local agencies provide the service.

It began in early 2000, but it wasn't until the end of 2002 that announcements were made on training and giving people intensive behavioural intervention training, which is very, very difficult. So they simply weren't able to meet the demand, and we found, to my concern, that at the end of December 2002 there were 432 children who had been diagnosed as autistic and eligible for treatment who were aged out. They had reached age six, they had not received treatment, and many of those children had been on the list for 18 months. I used the strongest word in the whole report with that, and my statement was that I believe that to be unconscionable, because there are still hundreds of children out there who are in this position.

I am very pleased to be able to report that—and I don't for a moment think this is only because of the Ombudsman—the new Ministry of Children and Youth Services has been addressing this matter quite seriously and has essentially accepted much of what I have said. You'll notice in the separate report on autism I have included a letter of May 7 from the ministry, which was their final response. I actually reissued my report because I didn't like their first response, and I gave them a second chance before I came here to argue. They did respond, and it's clear there are now efforts being made to address, and, most importantly, from my point of view—and it's consistent throughout much of the stuff I did—they've learned the lessons about preplanning, being able to know what your market is and to meet it.

That's easy for me to say, you know. I'm not the one responsible for creating the program, but that's the job I'm given. It's like the press, you know. After the battle, after the war, they come riding over the hill and they shoot all the wounded, right? I always have that sense, and I feel a little awkward about it, but in fact that's what the Ombudsman does: deals with the problems that have occurred and why, and asks what we can do to change them.

I'm here to tell you about the Family Responsibility Office yet again. I know that every member of the House has their constituency office being barraged, or at least called on frequent occasions: "What can you do about the FRO? I can't get my money," or, "The FRO is collecting the money, and it shouldn't be paid any more," depending on what is happening.

As I said this morning, FRO has been an equal-opportunity stake maker when it came to either collecting too much money or not collecting enough. There are reasons for that that aren't because they don't want to do it. The bottom-line reason, which I was reporting on in 2001, is that they don't have the technological support that supports the program: the computer systems and the case management system.

1600

I'm displeased and disappointed to report that while there were 1,451 complaints to my office in 2001, they

were 1,466 this year. Nothing appears to have changed. However, the request for proposal for the technology has now been posted. After preliminary expressions of interest were made, they're hopeful to be able to start working on the integrated service delivery system—or at least to award the contract in December. That's some movement on a very important issue. And I care about that issue because individuals often on the verge of, if not in, poverty are suffering because money is not getting to the spouses and children.

The government is out a pile of money because they have subordination rights to social assistance, which the government has been required to give because of the inadequacy of the collection of payments. While I know that my successor will be here reporting to you for about the next year or so at least, I do have some hope that we're going to be moving in the right direction.

By the way, I want to point out to you, if you're interested, that starting at page 55, you'll find seven pages of FRO case stories that are quite instructive on just what is happening. And they're by no means definitive; they're just an example. There are over 80 case stories covering the market, all the ministries in the report. I won't bore you with them, but they are there if you're interested in looking at them.

Corrections: I have said this year that I'm not going to go out being known only for corrections, so I'm not leading with corrections this year. That's my largest number of complaints: 7,600 this year, I think. But it's a natural thing. What I am able to say is that some of the overcrowding has decreased. I think it will happen again. It's not all just because we don't have enough jails. You can never build enough.

There are things happening in our courts which create overcrowding in jails, and that's not just because they're giving them a lot of sentences. There are delays in hearings, so people who have been denied bail are sitting in detention much longer than they did at one time before they get to trial. Personally, I think some of the guys—a lot of defence counsel won't agree with me, but I've been around a long time; I was a defence prosecutor and a judge—are staying in jail waiting, doing their time in the jails rather than getting themselves to trial too fast because judges are starting to get sensitive and give them three-times credit for time they spend in a correctional facility awaiting trial, if you know what I mean.

Judges used to always pretty well give an accused who'd been in jail credit for double time because they weren't eligible for parole while they were in. Well, now we're hearing stories of judges saying, "Oh, the conditions are deplorable. The poor fellows, we're going to give them triple credit." I've dealt with a lot of people in the correctional system. They're not unwise to that, and some of them are just doing the time because they're going to get less time in the long run, which is not the problem or the fault of corrections. It's a complicated world.

I have made special mention that, in my view, the senior Ministry of Correctional Services officials have

done a great deal and have made considerable effort to ameliorate some of the issues in the prisons and they have worked very hard and co-operatively with us, I must say—because we're on their case all the time—to achieve a level of living standard within the prisons that is commensurate with a civil society. That doesn't mean kids' camp. I'm not talking about that, because they're not. All you need to do is go and spend some time and you'll see that fast enough. I know I'll be reading about corrections for years, but it's doing a little better.

I've taken the position with the Minister of Municipal Affairs and Housing regarding the Tenant Protection Act, which I think needs some fine-tuning, that certainly some of the forms need to be changed. In my view, it operates just a little too quickly to be healthy. I can just report that I think you probably know the minister is looking at a possible review of the act and has at least received our views positively.

I'm going on and on and I don't want to. I'd be delighted to hear any questions you may have.

Mr Hardeman: A pleasure, Mr Lewis. When we toured the offices, I had a question. It sounded somewhat like I didn't know what I was talking about and I still don't. It's the issue of your office and the Provincial Auditor's office doing exactly the same thing for the people of Ontario, coming from two different directions.

One of the areas that that has come up in: I had the opportunity to sit on public accounts, and a discussion for meeting after meeting was about the request for proposals to change the computer system in the FRO offices, to do a better job of getting the money from the payer to the children that are entitled.

It seems to me, with this report, that you've done a considerable amount of work through the Ombudsman's office to deal with exactly the same scenario from the other side. The children and their mothers have a right to complain because they're not getting the government services they should be getting. But when you then do it under your own motion, it seems that you are doing exactly the same thing that the Provincial Auditor did for months on end, to tell the public accounts committee of the same government of what needed to be done to provide a uniform service for the people of the province.

Can you explain to me why that shouldn't be considered a duplication of services? Even though they came for different reasons, they came to do the same job and end up with the same conclusion. Obviously, in your report it's very evident that the solution is a better system within FRO and better case management. That's exactly what the Provincial Auditor came up with too. It seems to me we did a lot of work and a lot of duplication there.

Mr Lewis: Not with much success, Mr Hardeman, because we've been ignored for a long time. I want to say to you that the purposes for our coming at this issue—and they were quite separate—were not because of duplication. What happened was the auditor, in the normal course of his responsibilities, does reviews of programs every few years. It's sort of a value-for-money kind of audit. That's what he was doing. He was doing a value-for-money audit.

He does not receive or investigate any complaints from the public about the delivery of individual service. That's my job. What I do is, I received in 2001, the year that I did my study that you're talking about, and again this year, 1,450 to 1,460 complaints from aggrieved citizens. I am pleased and in fact proud to continue addressing each of those complaints individually, because we actually help people on the ground and in an individual case, which the auditor cannot and is not mandated to do.

But for me to receive these and say, "Oh, it doesn't matter why this happens. All I can do is solve the issues as they arise"—and if they get to me, by the way. Not everybody comes to me. You know that.

It's not good enough. How do we stop it happening? I wanted to know, why is it happening? This happened independently of the auditor. It doesn't mean we didn't talk to each other at any point. You're right, we were both looking at it. Our perspectives were different, but that's very rare.

There's all kinds of stuff that comes across my desk that looks like human rights cases. Generally speaking, we will defer to the human rights commission; privacy issues we will defer to the Privacy Commissioner; if it looks like integrity—so there's a lot of deference given.

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But I understand your concern, Mr Hardeman. If I were in the business of doing a lot of duplication of something another officer of the Legislature was doing, I would probably be much more concerned.

We've got a grievously flawed program here, and a lot of people are being hurt. There is an answer, and that answer ought to be attended to. I think I would have been remiss had I come only before the Legislative Assembly on an annual basis with a report setting out a bunch of cases where FRO didn't do it well. I have an obligation, it seems to me, to say why they didn't do it well and what they could do to fix it, and that's what I did.

Now, I would suspect that on a close examination you would find the auditor's report is far more exhaustive in terms of the inner workings and so on than mine was, because they did a value-for-money audit. I didn't do that. I worked deductively from what was right in front of me. OK? That's all I can say to you, sir.

Mr Hardeman: I'm not complaining or finding fault with what you've done. I want to state that upfront.

Mr Lewis: I understand that.

Mr Hardeman: During that same period of time that you did the work on this, there was nothing that got more phone time in my office in Woodstock than the FRO office. You're totally right: It wasn't working. It's working better, but it's still not working properly. I'm not finding fault with your doing it. I just want to make sure it's clear in my mind, that I understand what the Ombudsman's office in mandate is doing.

It goes to the other one on the autism issue. When we look at that, to start with, we're dealing with the people who spoke to the Ombudsman's office about the unfairness and the treatment they were getting from govern-

ment based on, first of all, age discrimination. For whatever reason, they were not getting the service that government said others were getting so that they would be treated fairly.

When you do that investigation, does that lead to the policy decision that government made to do that or is it just like at the end of the day your report could say, "I know it isn't right, but according to the policy that is the way it is"?"

Mr Lewis: No, we didn't do that. We neither supported nor opposed the policy. We accepted the policy for what it was. That's the government's decision. What we did was, we looked at what was going wrong with the implementation of the policy. Nobody else was doing this, by the way, although courts are doing it in different areas and they're not doing what I did, so I want you to know.

Mr Hardeman: This isn't duplication.

Mr Lewis: All right?

Mr Hardeman: OK.

Mr Lewis: This is ours, and the auditor wasn't there yet, but if he ever looked at it, I bet he'd have something to say.

We found that there were no statistics being kept that were necessary. We collected and we created the statistics from the community organizations so that we knew what was happening out in the field. We learned that they were being dealt with in each region disparately from another. The ministry has now come back and said, "You know what? You're right. We do have to create an administration centrally to provide equity in treatment around the province." OK?

The bottom line on this problem is, it's a huge money issue. This is going to be a \$100-million program for sure and it will still not exhaust it. It's already mounting up tremendously. I know government is all about choices and the demands are there, but the problem with this one is that once the program was started, there were a lot of public expectations raised—I don't think deliberately but by error—that shouldn't have been raised. We're just saying, be really cautious about what you promise. The demand has flourished. It's a program that needed to be gone back over and reinvented, but they're doing it. Does that help?

Mr Hardeman: Yes. I just want to say that similarly with that program, that's another one that was discussed at public accounts, and public accounts could not get the statistics and the information from the ministry relating to the program either.

Mr Lewis: Come and see me.

Mr Hardeman: I appreciate that fact that you have this in your report. Thank you.

Mr Lewis: I hope you look at it. It's interesting. This isn't a case of bad people, you know. I want to make it clear. That program came upon government with a lot of pressure and a lot of demand, so they responded. The ministry did what ministries do: They respond to the political imperative. But they didn't have the time and the luxury that was necessary, which I have.

Mr Rosario Marchese (Trinity-Spadina): Just a couple of things. Rather than asking a question on autism, I'll make a remark, because I've got three other questions I wanted to ask you, plus a statement I wanted to make at the end of it.

Autism is a serious issue, as we all know, and families are burdened incredibly by the problem. It assigns families to lifelong care of that individual, so as government, we have an incredible responsibility to help solve it. It is indeed costly, but what are we here for except to deal with such problems? But we'll leave that report for another day. I'll ask you three other questions.

Your face-to-face meetings with ministers, you report briefly, is a different approach that you have used. Do you find that to be much more persuasive and effective in terms of your work rather than submitting a report to which they respond?

Mr Lewis: Yes. Well, both work, but they each have their way—or generally work. I've tried to meet with a number of ministers, latterly especially. I get pressured too, just like governments? So I get the advocacy groups coming to me and pushing, and I get the complaints.

I'll give you an example, and the best example is the one about the Tenant Protection Act. I'd already spoken to that in my first year of service. I appeared before the staff of the Ontario Rental Housing Tribunal. I've got concerns about the lack of discretion that's available to the tribunal because of the way the act operates. So I wrote Mr Gerretsen a letter and I said, "I have some concerns. Rather than coming to you with a whole bunch of complaints"—I did address some complaints, and you'll see a couple of them in here, where people actually lost money they could have and should have had, and we got a little bit of money back. But I thought there was a much broader problem that can't be resolved on a case-by-case basis. It's up to the minister whether he wants to address it. I'm just giving him an argument.

I'm hopeful that my submissions in that area will be of some value and that they will receive some positive response. They may not. I've spoken to ministers before, sometimes in correctional areas. I've never been badly received, I don't mean that, but I haven't had accord on a point of view.

My job is twofold, as I see it, and it goes back to what Mr Hardeman was saying. It's addressing individual complaints, making recommendations, correction of error, and sometimes redress, if it's appropriate. But it's also trying to eliminate some of the complaints that occur. That's why in this report you'll see that I've emphasized with a lot of ministries that I really think it's important that they be setting up internal complaints processes. The Workplace Safety and Insurance Board just did it. They set up a fair practices commission, I think it's called. Yes. I'm sorry, Ms Pettigrew is my senior counsel. I do apologize. She had a lot to do with that report. Anything bad is hers. We get a lot of workers' comp complaints. So they've set up an internal organization. It's even got investigative authority within the department.

I've set out in this report some of the views, the criteria which I think an effective complaints resolution system needs, and if that reduces our account, good. I think it's to the benefit of everybody if complaints are resolved early. There still will be a need for people like me, but I hope they can reduce the numbers.

Mr Marchese: I am convinced that it's incredibly frustrating for your office as a whole in terms of being able to meet face to face with the minister, which I think is very good, by the way, but ultimately you have to wait for his or her response to solving problems. So you're recommending, based on all of the hearings you've had with individuals, sometimes groups, and at the end of the day you can only be at the mercy of the response. It must be frustrating from time to time.

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Mr Lewis: Yes, but if I can respond, I actually don't have a problem with that. I mentioned this morning I'm now the president of the International Ombudsman Institute, and our office operates very much the same way as they do throughout the world, as recommending organizations. I think that's very important in a democratic society. You're the folk with the responsibility and those in government have the accountability. I don't think it is appropriate for me as Ombudsman to say to the government, "Guess what? You're wrong. Do it." A court can do that in appropriate circumstances, but I'm not a judge.

Frankly, an Ombudsman is not valuable unless they have some regard from the assembly and from the public service, because, believe me, you can get twisted around by the public service. They've been around for a lot of years and they're very complex. So I think it's important that because our power, such as it is, is persuasive it requires us to be responsible—that doesn't mean we don't screw up occasionally; we do—and not ask for more than we have a right to ask, and to give people room. So I think it works, I really do.

Mr Marchese: I respect your position, and that's what the Ombudsperson does. That's the role of the office.

We used to have discussions in the old days—we're talking six to nine years ago—when we wanted to address systemic issues, because looking at individual cases might solve an individual problem, but we all understand that some issues are systemic in nature. I think the Ombudsman's office has dealt with issues like that.

In what ways have you looked at systemic problems vis-à-vis many of the various programs you've looked at, and how has that helped to reshape your work a little bit?

Mr Lewis: Corrections is an excellent example: 7,600 complaints this year. We have done some very interesting work with respect to, for instance, the private jail, Penetanguishene—a pilot project, a lot of problems in the early days and a lot of political anger up in the region, in Penetanguishene, about it and so on. Again, we did what we did with autism. It was the planning process. They did a pretty good job, but there were things that fell between the cracks.

So we looked at two big issues: They were health care for the prisoners and food availability, including special meals and so on. We found some real problems. I was asked by a member of the press this morning, "Was that because the private corporation was denying health care in order to save money?" I found no evidence of that. What I did find within the system were inadequacies in process, in getting the requisition for drugs, for dental or other care through to the health services department. That's been very helpful. It works.

We've done own motion investigations on overcrowding, we've done them on provision of clothing, found out that the old Don Jail, the Toronto Jail, went really sour last year on—that's probably the right word. We had a prisoner who didn't get a change of clothing for 45 days, and 30 was about normal. There were reasons for it, and we were able to address it. Now they get what the ministry policy is.

So we've done own motions, and we've done them well. One that I cut off this morning was the registrar general. You're all familiar with the issues with the birth certificates and so on. Well, 9/11 came along, and there was tremendous pressure to improve security. The ministry, over two governments, has implemented over 100 special procedures within the program in order to secure documentation: names, birth certificates, death certificates.

Then it went south. You've got huge lineups. You've got tremendous waiting, where people can't get birth certificates for their babies. In fact, I think that's true of my latest grandchild. The mother should stay home anyway, right? The hell with all this travel.

We went and did, actually, a fairly brief examination, and we have an undertaking that they should be back in shape by the end of July. I don't know. I'm going to be watching. I don't think current statistics sustain that, but I have the obligation to see what they do.

So I agree with you, Mr Marchese. I think it is important for the Ombudsman to look for systemic issues. My office is no stranger. You get ingrained in processes which seem, by nature of repetition, to be the right thing to do, and they aren't always. That's what we spend a lot of our time internally doing, which is creating new policies, procedures. Process has become very important within Ombudsman Ontario in the last three years to, I think, a beneficial result.

Mr Marchese: The final question has to do with the reorganization of your office. You spoke about that in your press conference and said that the way you've reorganized has caused more work for you—

Mr Lewis: It did.

Mr Marchese:—but, you pointed out, with much more effective results. Could you briefly explain again why that was a better thing to do?

Mr Lewis: The structure of the office was the Ombudsman, the executive director and then everybody else, right? So I had an executive director and an assistant reporting to me, and I knew what I was given. I've

experienced this before. This is not just government; it's people.

I felt the office was in some difficulty. I knew that going in. You're no stranger to it. You've been here a long time, right? I had a pretty fair idea of what I was walking into. I think I was little shocked at how difficult things were in the office. But, for some time, I really wasn't having much traction in changing it, and so I decided that the way to do it was to increase and spread accountability throughout the organization, and make myself more accountable.

What I did was, I decided to take the two senior counsel, one of whom is here, Laura. One person I made the new director of complaints resolution and investigations—you've met her; I brought Lenna Bradburn to you—and another person the director of corporate services. I created these positions. They had operational team meetings every two weeks. In the alternate two weeks, we have senior team meetings, which I attend, and as often as is necessary.

What's happened is, as we have developed strategic planning in the office, we've developed new human resources policies. We've done a human resources audit and created new policies in response. We've just completed a financial audit, and we're now moving to a new financial services model within the organization.

I couldn't believe the paper, the stuff that was coming to me that I had to be engaged in for process. It was hard work, but it also got me involved and knowledgeable in what was going on. Every once in a while, I could say, "No, I don't like this," or I could give guidance, which was more frequently the case. I just think it's been a very, very good process.

I'm not kidding you. It's been a lot more work. I said to my wife one day, "I don't know. Jeez. The older I get the harder I'm working. I've only got seven months left." But that's been a good thing.

I said publicly this morning, and I'm going to say it to you, that I think I will be quite pleased with the office I hand over to my successor, who will be nominated by you, I hope. And I hope you'll pick a person who will carry it on because I think I've gone about as far as I can go as a change agent internally. You probably know me well enough to know that I've never kept a job too long anyway.

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Mr Marchese: Mr Lewis, in case we don't see each other again—I'm not sure whether the committee is going to meet with you—I want to take this opportunity to say that when we hired you, when I was one of the individuals who was part of the hiring, there was unanimity in your appointment. You are a well-respected individual and we thank you for your service.

Mr Lewis: That's very kind of you. Thank you, Mr Marchese.

Mrs Cansfield: A couple of questions: In your report you identify—and I'll go to the FRO because the year starts with 2000 and it goes all the way to 2004, so obviously there was a theme in terms of the number of

complaints. Why did it take you four years to do your own-motion?

Mr Lewis: It didn't.

Mrs Cansfield: You did it last year? I mean, you identified the problem all the time—

Mr Lewis: I did the own-motion in 2001.

Mrs Cansfield: I'm sorry; I misread then. You did it in 2001, but the government did not act upon it and each year you have raised the issue and each year the numbers have remained relatively the same in terms of complaints?

Mr Lewis: If I could qualify that to some degree, I'd agree in a general sense. It's not that the government did nothing. In fact, I was very bullish about it in 2001 because FRO was then within the Attorney General's ministry. I went to the deputy minister, saying, "Look, this is a serious computer issue." We came to an agreement in 2001 that this was the case. The ministry undertook to go forward to Management Board—I'm not sure how it works, cabinet, management board—to seek funding at that time for the study that would be required to determine what the need was. They did go forward. It wasn't quick, but I believe Management Board accorded money for that study and ultimately that study was done.

You had it right that it didn't happen overnight. And yes, I kept complaining as time went on because the issue never changed. Neither did the complaint numbers. Eventually, I guess there's now going to be some action; at least I'm told there is. In fact, I can give you a statement as to what the most recent position is—or I could if I had brought the right document. Laura, do you have the briefing notes? I think I have it. No, I don't. I've been mixing up my briefcases today.

The ministry has informed me that \$40 million over four years has been allocated to the FRO in the recent Ontario budget. I'm told these funds are to be used to enter into a competitive process to acquire a technology solution to support a new case management model. I must say that I understand that the RFP process is now complete and that there is an expectation, depending on how many companies compete, that they will be starting in December to implement.

Ms Cansfield, it's not that nothing was done, but there are always competing pressures.

Mrs Cansfield: Thank you, sir. I was just reading from what was previous. It said, "Not much has changed since then." You go on to say, "The case stories highlighted in this report demonstrate grave continued inefficiency, which is simply unjustified, particularly for those in need."

"My view remains unchanged three years later"—

Interjection.

Mrs Cansfield: I'm just suggesting that you now have the monies that have been allocated, and hopefully this will change.

What I'm trying to get at is the theme issue. You identified a theme that has been consistent over a number of years. You identified it in your annual report on a regular basis, and then sometimes you go forward and do your own case motion, so that you can do even more in-

depth analysis because there isn't sufficient information. How do you determine that theme? Is it just by straight numbers? Is it by a simple consistency in the kinds of complaints? How do you determine a theme?

Mr Lewis: We did it by looking at the numbers. We also examined what the problems were. Why were these errors occurring? There were no proper bring-forward systems. These are technological issues. You can't do it on an abacus any more. At least, we don't know how to do it. What has happened is that this whole flow issue has become a matter of public despair. It's just working badly.

Having said that, trillions of dollars go through every year and get to where they belong, but there are so many people who don't get them or who have them taken from them who shouldn't have them taken from them that it's just become an inadequate process. It ought not to be. I've expressed in my press release today that my greatest disappointment in my term of office is that what I thought was going to be cured earlier has remained with the same number of complaints.

Mrs Cansfield: One of my other questions has to deal with—I think we actually spoke about it earlier in your office, and you've identified it, as well, on page 43 of your report. It's also in a number of your case studies. The issue comes down to accessibility. They can't get hold of somebody, and when and if they do, that person on the other end of the telephone isn't necessarily always the friendliest person. You alluded to some reasons for that when we met, but yet I didn't see it included in your statement as an area of grave concern. Yet the consistency in the complaints is that it seems to be a concern. It's certainly been a concern in my office.

Mr Lewis: I have some more information. Do you have the letter from FRO, Laura? Sorry, I was switching briefcases.

I've received some information because I've been pushy about this. I knew I was coming before you and to the Legislature, and I thought I'd give the director of FRO another shot at explaining what's going on. On June 4 she responded to me, and she set out a number of things that have been going on, one of which is the work with the case management system and the computer process.

However, she has outlined brand new non-technological planning and programs they have put in place, and one of them has to do with phone answering. These are only reported on for the months of February and March, 2004, but I've got a document here that sets out these new initiatives that have been taken, with respect to credit bureau, for instance: 56,000 letters went out to people who were not responding. They went to the credit bureaus. They went to the individuals, saying, "We're going to the credit bureau. You think you're a bloodless stone. We're going to squeeze it out of you because we're going to put the pressure on the credit bureau." And they can do that. They got back 11,000, but 56,000 went out.

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They have moved into a new initiative on the client services unit, which has to do with "diverting routine

calls away from the enforcement office"—because you know you can't get through; that's what you're talking about—"freeing them up to focus solely on enforcing court orders," which is a nice thing. "FRO now handles approximately 30% more calls per day. As of February 1, 2004, phone calls to FRO where the client had a payment or general information question are answered in less than four minutes."

They've got feedback. They claim that the average call-wait time in February-March was 2.9 minutes, that they received a total of 12,841 calls in that unit, and that the total calls received in that unit and the call centre were 48,000. Do you know the automated information line on FRO received 370,562 calls in the month of February—that was during the week—and 52,000 on the weekend?

They're starting to address this stuff. They have undertaken an actual calling of the—they call them the clients. It's called registration calls. "Another dedicated unit created recently endeavours to contact approximately 400 new clients per week within 48 hours of their case being registered. FRO welcomes them, explains the program, in addition to the clients' responsibilities. FRO also uses the contact opportunity to update any incomplete or missing information, which streamlines the enforcement process."

They have already, in February and March, a monthly average of 1,080 of those calls and their performance target is 1,200. They've got feedback. They wanted the Ombudsman to see that some people are happy, so they're getting calls back now from both support recipients and payers that things are—at least they're talking to a voice and they're getting some attention.

I've never thought this was malfeasance, that people just didn't want to do their jobs, but I think a lot of people got so damned frustrated in that office that sometimes service levels dropped. All I can say is that I hope these improvements are going to work. But without the technological case management stuff, it's never going to go away.

Mrs Cansfield: Thank you. I have one other question. I know you wouldn't put it in an annual report, but do you keep statistics that you've identified in here, riding by riding, on a long-term basis so that you can do a comparative analysis year to year over a five-year term? For example, if they drop or go significantly higher, where there's such consistency, would you consider investigating why?

Mr Lewis: We could, but we've only been doing a collection of those statistics in the last three years, I think, and providing them to you. One of the areas in which it became very evident that we were getting an undue number of complaints was because they had a jail, so Midland gets a heck of a lot of complaints that you wouldn't necessarily get in Etobicoke, although you do have a jail. That's really the only area where I think we've been able to see undue numbers of complaints.

There's actually another side to that question, Ms Cansfield, and that's community education, community

awareness of the complaints process. Those 22,000 complaints and inquiries aren't indicative of what all the complaints are out there. Altogether too many people don't know who the Ombudsman is or how the service is available. In the mid-1990s when the office was, along with the rest of government, severely constrained, it lost 30% of its budget, I believe, and about 33% of its staff. One of the things that was first to go was community education.

I have to tell you that personally I thought the office was oversized at the time with 134 people, but be that as it may, it had its approaches. So when I got into office, I found to my surprise that there was a tremendous imbalance of where the complaints were coming from. I didn't look at it from a riding point of view, but a regional point of view. The one area that really troubled me was the greater Toronto area: hugely underrepresented in the complaints, given the proportion of the 11-plus million people that the greater Toronto area represents—enormous. The north was overrepresented. I think western Ontario still has a fairly high number of complaints, if you examine this.

We've had to rob Peter to pay Paul to do this. In the last two years I have created a new community education program. We have a supervisor of community education.

Last evening, I appeared at the Centre for Addiction and Mental Health in celebration of their launch of a photo-novella program of really interesting photo books in new immigrant communities, particularly in the francophone immigrant communities. They are to deal with depression, post-traumatic stress disorder, gambling, alcohol and drugs. I was there. There were 100 or so people there.

I took the opportunity to say, "By the way...." These are, to some degree, marginalized communities. My office cares about marginalized communities too. We're available. We have a service. This is becoming very effective. It's starting to be reflected in our complaint numbers.

I appeared before the annual meeting of the Social Workers of Ontario. Why? I didn't really particularly want to talk just to the social workers; I wanted to reach their clients. That was the way to do it. What we tried to do is target organizations that have large constituencies that ought to know about our service. I'm really pleased with that social worker speech. I said to my staff, "I think I finally found my groove when I wrote that one, and now it's time to go."

But I can tell you, we've had a lot of response from the social workers asking for us—not me, but my staff—to go out and speak to groups.

As I've mentioned this morning, I'm not looking to empire-build or to seek complaints. I used this expression before and I mean it: "An uninformed community is a deprived community." They have a right to know about this important provincial government service. So I'm trying to get it out there.

I hope that my successor will see that as an imperative. It took me a little pulling to do it. I was very public

when I was police complaints commissioner. I've been a little less so. It's getting kind of relaxed, but I think it's part of the job.

Mrs Cansfield: I agree with you. Just one last question, and then I'll finish. When you do your analysis, do you write—and there are the obvious ones, like the Family Responsibility Office, but do you send the different ministries and government agencies a letter that says, "We've had X number of complaints about your ministry this year"?

Mr Lewis: Oh, yes. They know.

Mrs Cansfield: You do? Great. And do they come back and say: "Thank you. We're going to fix this"?

Mr Lewis: Often. I met with one of the ministries yesterday afternoon, just before I went to the Centre for Addiction and Mental Health. They were interested to know what I had to say, but they had a pretty good idea. They were there with their staff, and they knew what my issues were with that ministry. I met with the minister, the deputy and some other staff. I think that they're interested. I hope, though, that on the whole—I certainly haven't had any bad experience. They see it as a value. There are going to be mistakes. Nobody wants to perpetuate mistakes. So let's get them solved, and let's do it in a responsible way.

I can tell you that my office is no different. We make them. We have a complaints-against-us process. It's not pure; I don't have an independent overseer in the same way, but I can tell you, I settled a case during my term that was 10 years old, and it was a disaster.

1650

The first phone call I got before I got a congratulation after you, as the Legislature, appointed me, but before I took office, was when I was still down at alcohol and gaming, and it was a man who said to my executive assistant, "I want Lewis to talk to me before he talks to any of his staff about this complaint." This was unbelievable, and I did. I only—what?—two or three months ago put that to bed. There's a reference to it in the report

I thought our conduct was well below standard, to put it kindly. My contribution to this was that we got it done. But this thing started and all the problems occurred over a period of the first five years—two or three years. Although it's very complex, this case should have been dealt with in about one to two years. The ministries were bad too, and they conceded that they were bad.

He was a difficult complainant—very difficult, very smart, very determined. We did badly and I said so and I paid him money. I made him an offer and he rejected it. He asked for a huge amount. I said, "Come on."

Mrs Cansfield: I'm glad you settled the case, and I'm sure the person who follows you is as well.

I too would like to say that I think the people of Ontario have been well served by your thoroughness and your wisdom and your willingness to take on the difficult issues and to come forward. Those are big shoes that are going to be hard to fill. Thank you, sir.

Mr Lewis: You'll do well.

The Chair: Mr Sergio, you have the floor.

Mr Mario Sergio (York West): As well, I want to thank you for the contribution you have made working on behalf of and helping people in Ontario. I know that this is not the end for you, that you're going to go somewhere else, and I wish you well.

Just a couple of quick comments with respect to the program that was established some three years ago, the intensive behavioural intervention program for children. In 2002 you were advised that some 173 children were indeed assessed and eligible for services. That was out of some 900 waiting for both the eligibility and assessment for service. There seems to be a large disparity there. The answer that you got from the ministry at the time was that they didn't keep any record as to waiting periods, waiting times and stuff like that. I say that because you have mentioned you have punctuated timing and eligibility and treatment as soon as possible.

Is the ministry or the new department now logging this waiting time or is it still not being done?

Mr Lewis: The waiting list still exists, but I think they're starting to try to come under control. I'm sure they're now becoming aware of the need for the statistical base, the need for bringing some control over how this program is dealt with throughout the province by individual agencies. They've got care providers out there in one region who are allowing children over age six in, and they've got another one that's not allowing them in after age four or something, so it has to be smoothed out.

Mr Sergio: I guess my point is, it's not that we should have a waiting period for both eligibility and assessment for services. I think we should try to identify and offer those services as quickly as possible.

Mr Lewis: I agree.

Mr Sergio: But if ministries and the various agencies are not even now collecting data, information, as to waiting periods, how can we assess? In 2002, there were still 900 kids not assessed. How can we deliver the service as quickly as possible if we don't keep track of collecting information with respect to time?

Mr Lewis: You'll have to do it; no question about it. It has to be done, and it will be done, I trust. It's also going to require money. It's going to require dollars and it's going to require a trained cadre of persons competent to do the work. I don't mean the statistical gathering; I mean the actual intensive behavioural intervention. It's really hard stuff and nothing I want to do.

Mr Sergio: Can you touch briefly on what you have done with respect to this huge backlog of children waiting to be assessed, and the collection of information?

Mr Lewis: I don't want to underplay this, but all I've been able to do is highlight the problem. The ministry now has the responsibility, and I am confident that there is a real concern today to address it. This is a new ministry with some new staff now assigned without a vested interest in the prior planning. I think that matters; I think that counts. We're all protective of our own conduct. They're going to have to get their share at the

cabinet table. That's where the money is going to come from, or Management Board.

Mr Craiton: It has been a pleasure to meet you and it's the second time I got to listen to you. You've got a hell of a great laugh too.

I was interested in page 47, where you show the complaints by riding. Can I, as the member for Niagara Falls, access the 106 complaints? Can I actually look at them to see what they were for?

Mr Lewis: Can you get to see what they are?

Mr Craiton: Yes.

Mr Lewis: No, and I have to tell you why. My counsel, as recently as this morning, muzzled me in the press conference. They're always on my case because I'm garrulous, as you can see, and I like to talk and explain and whatever. But the Ombudsman Act states that (a) my investigations must be conducted in private, and (b) that I have an oath—and I have taken the oath—of confidentiality. So, unless I report something to the Legislature, I can't talk about it.

For instance, I got caught this morning because there's a case in here, and I'm not going to go into it, that involved an amount of money in flow, that hadn't been passed—

Mr Marchese: Thank God you didn't have names.

Mr Lewis: I never have the name or I would have wanted to say it, right? They won't let me have names. It's always Mr A and Miss S.

The reporter quite reasonably said, "How much money was lost here?" I don't know; I turned to Laura because I figured Laura or Lenna would know, and they're going like this. It's not that I couldn't have told that amount; I could have told the amount if I'd reported it. But because I didn't report it to the Speaker, I can't even tell you their names. That seems to me to be pretty silly. These lawyers, what are they going to do: sue me because I tell the amount? No. But if I told the name, you bet it would be serious.

I can well appreciate why you would like to know, because you care about what's going on in your riding. But I can't divulge it. I'll tell you where it does happen, though, that you could know. Members of the Legislative Assembly have the authority under my act to lodge complaints with me on behalf of their constituents. But you shouldn't do it without their permission. They'll get upset sometimes if all they want is to talk to you and then all of a sudden they find me or my staff calling them. But you can talk to them and say, "I haven't been able to address it sufficiently because I don't have an investigative authority, but maybe the Ombudsman can. Do you want me to pass this on?" I must receive your complaint. Once I receive it, unless I get the consent of the complainant, I can't tell you what I've done, not on an individual-case basis. There's good reason for that. There's generally the whole issue of protection of the privacy of the individuals, and it's also protection of the ministry. I think it was a balancing act when the statute was created.

What I can do is tell you the broad sweep of cases that came out of your riding. By the way, I was at the opening of the new Fallsview Casino on Tuesday last week. I remember when I used to run the commission. I wasn't allowed to gamble when I went to the other openings, but I could this time and I want you to know, sir, that my wife and I made our obligatory contribution to the coffers.

Mr Craitor: If you had called me, I would have made sure you won.

Mr Lewis: I'll have to have you investigated.

Interjections.

Mr Craitor: I'm only asking to try to ensure that I'm doing a good job as an MPP. So I can access in general the inquiries, just not the specific names?

Mr Lewis: It would depend on the nature, probably. There are the agencies that are complained about.

Mr Craitor: That I could ask.

Mr Lewis: You can get that. You don't have to come to me for it. It's right here on this CD. If you look at the back, you'll find that there is an index, and there is a report there by riding which will tell you how many FRO complaints came out of your riding.

Mr Craitor: That's actually what I was looking for. I didn't really need to know the individuals; I just wanted to know if you could get access from the different ministries.

Mr Lewis: Oh, yes, you can get all that.

Mr Craitor: The only other question I have is, do you have contact with your colleagues elsewhere in other provinces who provide the same services?

Mr Lewis: I do. In fact, I hosted a meeting of my colleagues across the country. There is no federal ombudsman of general jurisdiction. However, one that we treat as a colleague is the Official Languages Commissioner of Canada, who reports to Parliament. Each of the provinces, except Prince Edward Island, has an om-

budsman. We meet on occasion and we talk quite regularly. But beyond that, I am president of the International Ombudsman Institute, so I have met with ombudsmen throughout the world.

In Quebec City in September, every four years there's an international conference held, and it's going to be held in Quebec City. But I was in Korea only a month ago, at the invitation and expense of the Korean government, to address the Asian Ombudsman Association. I've been in Taiwan, at their expense. I was in Azerbaijan twice last year at the invitation, the first time, of the European Council and the second time of the United Nations Development Programme. That was really interesting. I was at a round table dealing with the 10 human rights ombudsmen of the former Soviet republics. That was at no cost to this government. So, yes, I'm very involved.

Many of the problems are similar, a lot of the issues are similar, although, coming from Canada, we have to be pretty grateful, from some of the things I've seen.

Mr Craitor: Thank you very much.

The Chair: Any more discussion or questions? Seeing none, thank you, again, for a wonderful presentation and for your candour. We always enjoy having you here.

Mr Lewis: I hope you'll allow me to come once more before I leave.

The Chair: We'd love to have you back.

Committee, the only news I have is that the subcommittee will likely be meeting at the beginning of next week. We're still trying to set that up. All other meetings will be here, based on the legislation that has been passed on to the subcommittee and which I believe is being negotiated by the House leaders. I don't have any dates on that yet.

Could somebody move adjournment? Thank you, Mr Delaney. We're adjourned.

The committee adjourned at 1704.

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. Also taking part / Autres participants et participantes

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Official Report of Debates (Hansard)

Wednesday 1 December 2004

Journal des débats (Hansard)

Mercredi 1^{er} décembre 2004

Standing committee on the Legislative Assembly

Government
Advertising Act, 2004

Comité permanent de l'Assemblée législative

Loi de 2003 sur
la publicité gouvernementale

Chair: Linda Jeffrey
Clerk: Douglas Arnott

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 1 December 2004

Mercredi 1^{er} décembre 2004*The committee met at 1001 in committee room 2.*

SUBCOMMITTEE REPORT

The Chair (Mrs Linda Jeffrey): Good morning. This is the meeting of the standing committee on the Legislative Assembly with regard to Bill 25.

Our first item of business is the report of the subcommittee. Mr Craitor, would you read the report into the record, please?

Mr Kim Craitor (Niagara Falls): Yes, I'd be pleased to. Report of the subcommittee dated Monday, November 29, 2004:

Your subcommittee met on Monday, November 29, 2004, to consider the method of proceeding on Bill 25, An Act respecting government advertising, and recommends the following:

(1) That the committee meet in Toronto from 10 am to 12 noon on Wednesday, December 1, 2004, to hold public hearings on Bill 25.

(2) That notice of hearings be provided by newswire service and be placed on the Ontario Parliamentary Channel and the Internet.

(3) That interested people who wish to be considered to make an oral presentation should contact the committee clerk as soon as possible and no later than 12 noon on Wednesday, December 1, 2004.

(4) That scheduled groups be allotted a maximum of 20 minutes and individuals be allotted a maximum of 10 minutes in which to make their presentations and answer questions from the committee members.

(5) That, if all witnesses can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties.

(6) That, if demand exceeds availability, then the committee clerk consult with the Chair and subcommittee members.

(7) That late requests be accommodated if availability exceeds demand.

(8) That written submissions be submitted as soon as possible.

(9) That the research officer prepare a summary of the testimony heard by the committee.

(10) That the committee commence clause-by-clause consideration of Bill 25 at 3:30 pm on Wednesday, December 1, 2004.

(11) That proposed amendments to be moved during clause-by-clause consideration of the bill should be filed with the clerk of the committee by 1:30 pm on Wednesday, December 1, 2004.

(12) That the Chair of Management Board or the parliamentary assistant be invited to make an opening statement of up to 10 minutes at the commencement of public hearings.

(13) That each caucus be allotted up to five minutes to make opening statements at the commencement of public hearings.

(14) That, in consultation with the Chair, the clerk of the committee be authorized prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair: Is there a motion to adopt?

Mr Ernie Hardeman (Oxford): Not to belabour the point, I was at the subcommittee—it was a conference call—and, to be honest, I don't remember making 14 recommendations. I'm sure it's all for good reasons, but I have problems with a couple of them.

My understanding is that there's a House leaders' agreement as to the timing of it in committee: that we will spend two days on it, and hopefully we can conclude the business of our committee in two days. But unless there is a motion passed by the Legislature that doesn't bind this committee—I don't remember discussing in our subcommittee meeting the issue of when we would start clause-by-clause and when we would finish clause-by-clause.

I don't know how that all got in here, between the time that I was involved in the meeting—I know that at the time, one member of the committee was not there, so we all agreed that if that individual agreed with what we proposed—I wouldn't want to suggest who it might have been—we would then agree to the subcommittee report as we had discussed it. But I do find it at least twice as long as what we discussed. I guess I have a question as to how we got there.

The Chair: With respect, I believe there isn't a direction in these minutes that indicates when clause-by-clause will be completed. I believe that, as a function of going through the clerk's department, you must itemize each step of the process, and this is just an extension of what we discussed during subcommittee. But I'm happy to take your direction.

Mr Peter Kormos (Niagara Centre): I regret not being able to be more enthusiastic in my support of Mr Hardeman, because I usually am, and I would, under other circumstances, be enthusiastic in allying myself with him today. But in my view, Chair, because you came to me with the minutes of the subcommittee, I'm satisfied that this report reflects the intent. Further, I want to ask, if I may, because advertising commenced on the 29th, can you tell us whether or not there was any interest displayed in making submissions to the committee?

The Chair: At the moment, no, not yet.

Mr Kormos: The position of the New Democrats, at the House leaders' meeting and consistently, quite frankly, with respect to other bills of a similar nature, is that the water should be tested in terms of whether or not there's an interest in public participation. If there is no interest in public participation, God bless.

I, quite frankly, am interested in the fact that the government may have amendments. I appreciate being advised, if that's the case. I can indicate that, at this point, I do not anticipate moving any amendments to the bill, not out of my support for the bill, but simply because I'm not going to be moving any amendments to the bill. So we may well be able to deal with this bill this morning. I don't know what other committee members have to say. Of course, that doesn't interfere in any way with accepting the subcommittee report, but I am loath to bifurcate this into this morning for comments only and this afternoon for clause-by-clause. If we can deal with clause-by-clause this morning, why aren't we doing it this morning? We've set aside brief periods of time for the minister and for opposition parties to make comments, and, as I say, I'm not proposing any amendments. I don't know if the government is; they may well have one or two amendments. We should be moving along.

1010

The Chair: Thank you for your advice. But I believe, because we have indicated that the last opportunity for someone to submit their desire to do presentations was up till noon, in order to give everybody an opportunity to participate, should they want to, given the short time-lines, we really should leave clause-by-clause or any amendments to this afternoon.

Could I have a motion to adopt the subcommittee minutes?

Mr Craitor: So moved.

The Chair: Any discussion?

Mr Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Arthurs, Craitor, Milloy, Sergio, Smith.

Nays

Hardeman.

The Chair: That's carried.

GOVERNMENT ADVERTISING ACT, 2004

LOI DE 2003 SUR LA PUBLICITÉ GOUVERNEMENTALE

Consideration of Bill 25, An Act respecting government advertising / Projet de loi 25, Loi concernant la publicité gouvernementale.

STATEMENT BY THE MINISTER AND RESPONSES

The Chair: Our next order of business is an invitation to the Chair of Management Board to make an opening statement. Good morning, Mr Phillips.

Hon Gerry Phillips (Chair of the Management Board of Cabinet): Thank you, Chair. I guess you'd like me to give a few opening remarks, and then I'd be open to any questions or comments from members of the committee.

I appreciate the chance to be here. This really is, in my view, groundbreaking legislation. I'm not aware of any other legislation like it in North America, perhaps in the world. We, the Ontario Legislature, are ploughing some new and important ground here. As members know, this is a bill that would eliminate the use of taxpayers' money to fund partisan advertising.

I think you all know the essence of the bill, that before any paid advertising or broadly based householders, bulk mail, are sent out from ministries, they would have to go to the Provincial Auditor for review. The Provincial Auditor is the most appropriate body, an officer of the Legislature. The Provincial Auditor or his or her appointee would review the advertising. The bill lays out the ground rules for advertising that could be approved. I think you all know that, to use the language of the bill, "It must be a reasonable means..."

"i. To inform the public" ... about "government policies, programs or services..."

"ii. To inform the public of their rights and responsibilities..."

"iii. To encourage or discourage specific social behaviour, in the public interest.

"iv. To promote Ontario or any part of Ontario as a good place to live, work, invest, study or visit."

All ads have to "include a statement" that they were paid for by the government of Ontario. The bill also says that the "primary objective" of the ad must not be "to foster a positive impression of the governing party or a negative impression of any person or entity who is critical of the government."

As well, under the proposed legislation the name, voice or image of members of the executive council could not appear in advertising directed at an Ontario audience.

The one issue that I think was discussed in the House during debate on second reading of the bill was the ability to use the image of an executive for advertising

whose primary audience is outside of Ontario, and let me give you our thinking on it.

Often, it is the individual who heads up a government who can be the best spokesperson for that jurisdiction. If you've listened over the last few months, the state of Florida has gone through quite a difficult period of time with hurricanes. To try and restore their tourism, you will notice it is the governor of Florida's advertising that is running here in Ontario. I gather they've concluded that that is the most effective way to get tourists to go back to Florida—to use the governor of Florida to be the spokesperson.

The governor of New York state is often used to attract industry to New York state.

So the intent of that exclusion was clearly to not put Ontario at a disadvantage if we were to be faced with a similar circumstance. I think that's a prudent thing to do on behalf of the taxpayers of Ontario.

As I said earlier, we're confident that the Provincial Auditor is the appropriate officer of the Legislature to refer this advertising to. I think you all know that, where there is a health or a safety issue, an emergency, advertising is permitted to be done without the review of the Provincial Auditor.

I would say once again to the committee that, if we pass this legislation, I think the Ontario Legislature will be very proud of it. It is groundbreaking legislation, like nothing else that I'm aware of, certainly, in North America. The auditor commented on this in his report a few years ago. I think it will be another step forward in helping the public to feel confident about their tax dollars being used wisely.

With those brief comments, I'm open to questions or comments from members of the committee.

The Chair: Are there any questions of the minister?

Seeing none, thank you very much for your time. Oh, did you have a question, Mr Hardeman?

Mr Hardeman: Just a couple of quick questions. First of all, I want to thank you, Minister, for the comments. The issue of being able to advertise outside of Ontario using the best salesperson the province has, which may in fact be—I don't want to commit to that, but it may be the Premier. If that's good for advertising on the American side and back into Ontario, why is that not good in Ontario? Why should that not be allowed, that the Premier could in fact encourage people from one end of Ontario to frequent the other end of Ontario? Doesn't he remain the same spokesperson?

Hon Mr Phillips: What you're looking for in other jurisdictions is a credible spokesperson. People may not be aware of that individual, but they're aware of the position. That's not necessary in Ontario, I don't think. If Ontario is advertising travel in Ontario, everybody would know that you don't need the Premier to say that's a good idea. I think they are quite different circumstances. It's having an instant spokesperson in a jurisdiction that may not be familiar with our province in detail, but would be aware of the position.

Mr Hardeman: I guess my question is, though, a few years ago the farmers of the province were very concerned that the head of the province of the day was not being visible enough about promoting their product, and this legislation would prohibit that from happening. I can see that a lot of the farmers I represent would be opposed to taking away that ability to have the Minister of Agriculture or the Premier of the province to say, "Everybody in Ontario should buy Ontario products."

Hon Mr Phillips: Are you speaking of Foodland—

Mr Hardeman: No, it's any type of advertising, but it was in Foodland that they were talking about.

Hon Mr Phillips: Advertising shouldn't prohibit the use of advertising like Foodland, but I think there is a challenge in using the images of the Premier broadly in Ontario. The reason for the exception outside of Ontario is, as I said earlier, that the position of the Premier has credibility just as the position of governor would have credibility outside of a state. That's the reason for the exclusion. I think we have to limit the exceptions we would have in Ontario.

Mr Hardeman: Just one final question just to help me understand the full impact of the bill. Obviously it's been on the docket for some time now. Do you believe that everything the government has done in advertising since the introduction of the bill would comply with the bill?

Hon Mr Phillips: Actually, I do, yes.

Mr Hardeman: So the bill really isn't earth-shattering or—

Hon Mr Phillips: Pardon me?

Mr Hardeman: It isn't really a groundbreaking bill then, because advertising hasn't changed much since the introduction of the bill.

Hon Mr Phillips: Only because we committed that we would live up to the intent of the bill, even though it wasn't passed. I think you're all familiar that, dare I say, the previous government was spending \$10 million every single year just on broad householders that we've eliminated. So both the spending on advertising and the approach in advertising have changed, and they've changed because the Premier made a commitment when we introduced the bill that even though it hasn't been passed—by the way, the auditor has indicated that even when it's passed, he will need a period of time to phase it in because he's going to have to make sure he has the resources to be able to do the job. I think he's indicated a period of a few months before he can begin to accept advertising. He's got to staff up and get an individual on board who can deal with it. The reason the advertising that's been run since the bill was introduced hasn't changed is because it meets the intent of the bill.

1020

Mr Hardeman: I guess, Mr Minister, you misunderstood my question. The question was, why hasn't it changed from before the introduction of the bill to after the introduction of the bill? My people haven't noticed any difference in the advertising your government's doing than previous governments were doing. We're still

getting all the good stuff that you want the people to know.

Hon Mr Phillips: I'd say two things: One is there's substantially less money being spent on it, and it clearly meets the intent of the bill. This was one of the early pieces of legislation that we introduced, as you know.

The Chair: Any other questions? Thank you, Minister. Please feel free to stay. I know you probably have a busy schedule, but if you'd like to stay for the opposition's comments, please feel free to stay.

Hon Mr Phillips: Actually, there is cabinet, and I do have a couple of items on the agenda that I should go back to.

The Chair: Thank you for coming.

Mr Kormos: I suspect you know what we're going to say.

Hon Mr Phillips: I'll await the outcome of the independent legislative committee's work.

The Chair: Thank you. Our next item of business is the opening statement from the official opposition critic, Mr Yakabuski.

Mr John Yakabuski (Renfrew-Nipissing-Pembroke): I listened intently to the minister this morning, and I have a couple of concerns with regard to the possible amendment that I believe we would like to see proposed, prohibiting the use of advertising that originates in a source outside of the jurisdiction. He touched on advertising like the Florida governor might do or something.

Our concern is that, if the government can advertise from those sources, if it can be viewed by the people of the province of Ontario, it would break the spirit of the law. They're saying they can't do this; Mr Phillips was just talking about it. If you can't do it from inside the province, we would certainly be concerned if the same kind of message could be delivered from outside the province. He did talk about the tourism industry and stuff like that, but I don't necessarily agree that we can go through the back door instead of the front door with getting the Premier's face on television. It could be used that way.

I agree with the spirit of the bill, but I question whether or not the government has adhered to the spirit of the bill, even though it has not yet been passed, with regard to their own behaviour. The pamphlet they released chronicling the first year of the McGuinty government was certainly a glossy, wonderful story about how perfect things have been in Ontario in the past year. Most people on the outside would wonder who wrote it, if it's supposed to be simply an information pamphlet for the people of Ontario. It was clearly political, with the intention of swaying the electorate and the voters to believe that this government has done a tremendous job in the past year. That's a matter of opinion, which is not really my concern with regard to this committee or this bill, but the intention of it is the concern, and it certainly goes against the spirit of the bill as we see it.

Another concern we have about the bill is that there are no penalties. It's pretty hollow if there's no penalty

for breaking the legislation that you're bringing in. It kind of makes it somewhat meaningless in that respect. The fact is that there's only one opportunity for the auditor to chastise the government, if we can call it that, for doing something against the law, and that's only the one time of year that he would report on it.

So while we support the spirit of the bill, it's questionable what the government's true commitment to the bill is, because there are many ways around the legislation and many ways in which they could abuse the spirit of the legislation and get away with it. That's a concern.

We don't want a bill being brought in just for the politics of the bill, and I think that to some degree that's exactly what we've got here: The bill has been tabled because they want to satisfy a political constituency. But are we really going to see substantive changes in the way business is done in the province of Ontario?

We will be proposing an amendment to that effect. If they could eliminate that as a possibility, advertising from a source outside the province that could be piped back into the province—if we were targeting a situation in Texas that was going to be run on Texas local stations that were not viewed in Ontario, that might fit the bill. But if it can be pumped back to the people of Ontario, I think it could be viewed as a cynical way of getting the Premier out there and promoting Ontario, which, quite frankly, is political.

Those are some of the things we have concerns about and one of the amendments that we expect to be bringing.

The Chair: Our next item of business is an opening statement from the third party critic, Mr Kormos.

Mr Kormos: What happened to the opening statement from the government?

The Chair: I believe Mr Phillips was the one—

Mr Kormos: No, the report of the subcommittee said each caucus would have five minutes: item number 13.

The Chair: Mr Arthurs, were you prepared to do that or was Mr Phillips essentially the—

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): My understanding, prior to arriving and seeing the subcommittee report, was that the minister would be presenting on behalf of the government.

Mr Kormos: I'm not suggesting you have to. Item 13 says "each caucus."

The Chair: I think yesterday it was kind of an either/or; it was one or the other. If we couldn't get the minister here, then Mr Arthurs was going to pinch hit.

Mr Kormos: I just wanted to make sure the government caucus had an opportunity to put themselves on the Hansard transcript here.

The Chair: I'm sure they'll have an opportunity later on. Mr Kormos?

Mr Kormos: Look, I've been around here long enough to know that government after government has the frequent refrain of, "Oh, if only we could get our message out." I'm not going to say I know what goes on in this government's caucus meetings, but I bet there's been more than a few of them where the lecture from the front of the room has been, "It's all about getting the

message out. The broken promises? No, we've got to get the messages out that these are the promises we kept"—just as an illustration; I don't know whether that happens, it's speculative on my part—and how people have to be consistent and stay on message. They shouldn't deviate, because that's what causes difficulties. Do you understand what I'm saying, Chair?

Trust me, yours is not the first caucus that's received those kinds of lectures. I'm sure the Conservative caucus got those lectures time after time. I know the government from 1990 to 1995 got those lectures time after time, and I also know that the Peterson government did the same. That's the frustration of being in government. It's the—oh gosh, who's the comedian who just died in the States? The "I don't get no respect"—

Interjections: Rodney Dangerfield.

Mr Kormos: —the Rodney Dangerfield syndrome: "We don't get any respect. We don't get credit for the things we've done. This is so unfair." While the opposition criticizes the media—television, print media, radio—for buying everything the government spin doctors put out, lock, stock and barrel, the government and their members insist that the media is biased against the government and doesn't treat them fairly either.

So there's a natural desire on the part of government to want to present itself in the best possible light. I've got to give credit—we made reference to this during the course of second reading debate—to the drafters of this bill, who are very competent drafters. Let me give you a for-example: Although Mr Phillips suggests Jeb Bush is the appropriate person to be promoting Florida, let me tell you, a photo of a plate of stone crab claws would be far more effective for me than an image of Jeb Bush.

Take a look at section 6 and the critical—look, the fact that Dalton McGuinty has his image in something broadcast in the United States—nobody in the States knows who he is.

Mr Hardeman: It's irrelevant.

Mr Kormos: Yes, it's irrelevant. But then that brings into question why you would put his picture on it, right? If it were being broadcast out of Houston, fair enough, but when it's broadcast out of Detroit or Buffalo, then one wonders what the true intent was.

Take a look at paragraph 5 of subsection 6(1), because I think it is the critical standard. "It must not be a primary objective"—and that, we've talked about in second reading, is interesting; in other words, it can be a secondary objective, right, as long as it's not the primary objective?—"of the item to foster a positive impression of the governing party."

If this standard had read, "It must not be an objective," instead of just "the primary objective"—in other words, if it's a secondary objective, the government can say, "Well, no, no, we're making it quite clear that it was a secondary objective of this propaganda piece to promote the governing party," and then it passes muster. It's A-OK. It's pristine, according to the bill.

But "a positive impression of the governing party"—look, governments try to campaign on their history as a

government. The piece we saw a month ago—was it five weeks now?—the glossy piece, the report back to the people of Ontario, although I acknowledge it did not mention Liberal Party once and by doing so, that is, omitting any reference to the Liberal Party, it is pristine under this section, because of "positive impression of the governing party."

Let's cut to the chase. There was a clear intent to get a message out there, to get some spin out there, to create a positive impression of the government in the context of what had been a pretty bad year or rough year. So, please, let's not kid ourselves here.

I congratulate the drafters of the legislation. If it's a secondary objective of the item, then it's OK, and people can even concede that. People can admit, "Yes, the primary objective was to talk about how good our educational system has become"—please—"but the secondary objective was to promote the Liberal Party, and it was Liberal policies that were able to do that." So that then clears the bill. Second, if it's the governing party that's excluded from being touted, as compared to the government, that then clears the bill. So that's where, I suppose, a whole lot of folks have a problem.

Now, part of me says, "Go ahead and spend all that money anyway," because you're right, the Tories spent a fortune. My blue box outside my old house on Bald Street was just chock full of the stuff. Just as you people use red background to try to create that identification—and I'm not sure it really exists out there, the identification with the Liberal Party; it's only political activists who really understand that—the Conservatives were using blue. And I can't recall, but I suppose the New Democrats would use green or orange back in the era of 1990 to 1995. I don't think it works.

Mr Phillips made reference to the fortune the Tories spent. It didn't do them a bit of good. They still got slaughtered in the last election. The public finds that stuff, in my view, offensive, clappytrappy bunkum. They're more sophisticated than that. I really believe they are.

So this government will pass this bill, I presume, and will continue to produce message pieces, and those pieces will not offend the letter of the law, as the letter of the law is expressed in this bill, but I'm saying that's precisely the problem. The objective should be—if this is what people want—to prevent any item being paid for at taxpayers' expense that has a primary, secondary or tertiary objective to foster a positive impression of the governing party or of the government. Without that, it's not much of a hurdle. This is, as New Democrats have been wont to call it, the Mack truck bill, the Caterpillar tractor bill, the Lectra Haul bill, to whit the size of the loopholes through which one could drive a Mack truck, Caterpillar tractor or Lectra Haul.

There you go, Chair. I'm looking forward to this afternoon.

The Chair: I think that concludes our business this morning.

If there are any amendments, they are supposed to be filed with the clerk by 1:30 so we can give consideration

to them this afternoon. If there are amendments, please make sure you meet that deadline to assist our clerks in preparing the documents necessary. We'll be recessed until 3:30, when we'll be conducting clause-by-clause consideration of Bill 25.

The committee recessed from 1034 to 1535.

The Chair: The standing committee on the Legislative Assembly is called back to order. We are considering Bill 25, An Act respecting government advertising. We meet this afternoon for the purpose of commencing clause-by-clause consideration of the bill.

At the outset, I'm required by standing order 78 to ask this question: Are there any comments, questions or amendments and, if so, to which sections?

Mr Arthurs: The government has amendments to the bill in a number of sections: 2, 3, 3(2), 3(4), 3(6)—

Mr Kormos: If I may, Chair, I've received copies of all the government amendments, along with the PC amendments. As I indicated earlier, there are no NDP amendments. We don't have to go through them one at a time.

I do want to mention that the clerk's office went out of their way to get them to me in a timely fashion, and I appreciate that.

The Chair: OK, so everybody has a copy of the amendments. I understand there have been a number of amendments filed with the committee dealing with a number of sections of the bill, so we can go through each one in order.

Are there any comments on section 1 of the bill?

Mr Hardeman: Just a question on procedure: Are we going through the bill as it's presented, and then just dealing with the amendments as we come to them? So if there are no amendments to the section, we either agree or disagree.

The Chair: Yes.

Mr Hardeman: Very good, thank you.

The Chair: So going back to section 1 of the bill, are there any comments or questions? If not, shall this section carry? It's carried.

On section 2 of the bill, I have a motion here.

Mr Arthurs: I move that section 2 of the bill be amended,

(a) by striking out "Provincial Auditor" in subsection (2) and substituting "Auditor General"; and

(b) by striking out "Provincial Auditor's" in subsection (4) and substituting "Auditor General's."

The Chair: Any further discussion?

Mr Hardeman: If I could just have the parliamentary assistant tell me the significance of the name change.

Mr Arthurs: This is in accordance with Bill 18, where the change is from "Provincial Auditor" to "Auditor General." So this is making this consistent with legislation recently passed.

Mr Hardeman: Legislation being passed or is passed?

Mr Arthurs: Passed as of yesterday. It received royal assent yesterday.

Mr Hardeman: OK.

The Chair: Is there any further discussion? I'll now put the question on the amendment. All those in favour of the amendment? All those opposed? That's carried.

There being no further amendments to section 2 before the committee, I'll now put the question. Shall section 2, as amended, carry? All those against? That's carried.

On section 3, there are three government amendments.

Mr Arthurs: I move that subsection 3(1) of the bill be amended by striking out "by a person other than the crown or a crown agency" at the end.

The Chair: Any discussion?

Mr Kormos: If I may, this is an interesting amendment. It would be interesting as well to have some Hansard of what the intention is.

Mr Arthurs: The principle objective here is that the distribution of material would be other than by the crown or crown agency, so in effect it's a redundant clause.

The Chair: Any more questions? Any further discussion? I'll now put the question on the amendment. All those in favour? All those opposed? That's carried.

Continuing with the second amendment, Mr Arthurs.

1540

Mr Arthurs: I move that section 3 of the bill be amended,

(a) by striking out "Provincial Auditor" in subsection(2) and substituting "Auditor General"; and

(b) by striking out "Provincial Auditor's" in subsection(4) and substituting "Auditor General's".

The Chair: Any further discussion?

Mr Kormos: If I may, "Auditor General's", I presume, is—OK, it's possessive.

Mr Arthurs: Yes, as opposed to plural.

Mr Kormos: Otherwise, I would have had to be critical.

Mr Bob Delaney (Mississauga West): It would have to be "Auditors General."

Mr Kormos: Very good.

The Chair: You've had your question answered, Mr Kormos?

Mr Kormos: Yes, ma'am.

The Chair: Is there any further discussion?

I'll put the question on the amendment. All those in favour of the motion? All those against? That's carried.

Was there one more?

Mr Arthurs: I move that section 3 of the bill be amended by adding the following subsection:

"Interpretation

"(6) For the purposes of this section, printed matter is distributed by bulk mail or another method of bulk delivery if, when it is distributed, it is not individually addressed to the intended recipient."

Mr Kormos: This is interesting because we all know what bulk mail is. You refer to it in subsection (1). Does this emphasis on bulk mail, though, because you go one step further—and just in case we weren't sure what bulk mail was, you've defined it in subsection (6)—clear the roadway for propaganda that is individually addressed?

Mr Arthurs: The intention is that individually addressed mail, that could include anything from pay

stubs to a licence renewal, that would go out in quantity, that one might want to argue then would be bulk—it's clearly to ensure that the business that is addressed specifically to individuals actually gets to them without having to go through the necessity of the commissioner's review as advertising; in effect, it is not.

Mr Kormos: Help me, just very quickly. We see that section 3 requires that distribution of stuff under—now we know—bulk mail has to meet the standards required by the act, because subsection (4) indicates that clearly: You've got to get it cleared. So by inference—help us; if the bureaucrats who are here could be of assistance, just to make this very clear. We know it's clear that bulk mail has to have the seal of approval of the Auditor General; right? That's what section 3 tells us. You're going to great lengths to ensure “bulk mail” means what we call bulk mail. So is mail that's addressed—to wit, it is individually addressed, so therefore it's no longer bulk mail but it can be mass mail.

Mr Arthurs: It could be in quantity but it's not intended to fall within the act for the purposes of advertising. It's intended to ensure that a quantity of mail that one might argue was bulk mail isn't held up in some fashion by virtue of the fact it's been individually addressed.

Mr Kormos: Fair enough. You don't want to have to have pay stubs vetted; right? But I wouldn't think you would have to, because you're so *prima facie* not close to the line. What I want to know is—help us—where in the bill does the bill extend its coverage to individually addressed mail? We all know what that's about. We all in this business develop mailing lists.

The Chair: Would ministry staff like to respond to this? Could they come to the witness table and identify themselves for Hansard, please?

Mr Paul Korn: Hello. I'm Paul Korn, senior counsel with Management Board Secretariat.

The term “bulk mail” refers to a large quantity of mail, not necessarily unaddressed mail. I believe this section of the bill is intended to catch householders that are unaddressed and sent in bulk. This is to clarify that intent.

Mr Kormos: I understand that, and that seems to me to be patently clear. But there are two—and if I'm wrong, don't hesitate to say so, because those people will enjoy it no end—classes of things obviously covered. One is advertising via magazines, television, radio etc. We're familiar with that. We know what that means. That's section 2. The other is printed material distributed to households by bulk mail. You've gone further to define bulk mail. Your definition of bulk mail is what most of us understand bulk mail to be.

I'm looking for the third class of distribution that politicians, governments and political parties use all the time, and that is the mailing list mail-out, which is clearly not bulk mail, because you've gone so far as to very specifically define bulk mail as unaddressed mail. It could be a postal walk. It could be defined in any number of ways—it doesn't have to be to every resident of

Ontario—but it's unaddressed. There's no name of addressee or street address.

So then what about a mailing list—because you know how governments do that. It's phony, really: “Would you like more information on X, Y or Z? Check that off.” It's the same way the commercial world develops mailing lists. So where are mail-outs—which could be, quite frankly, thousands in number, tens of thousands in number—dealt with in this bill, as compared to bulk mail?

Mr Korn: Those would not be captured.

Mr Kormos: Thank you, sir.

Mr Hardeman: I was with it right till then. Technology has advanced so far in the last number of years that in fact I expect there are computers in this building that would have every voter in the province of Ontario being able to get an itemized bulk mailer with their name on it. You're saying this clause exempts that from the review?

Mr Korn: Printed matter that is individually addressed to the intended recipient would not be caught by this section.

Mr Hardeman: It would seem to me—I suppose this is for the government members. In my office, I have a mailing list for every constituent. It came directly off the voters list. So in fact, government advertising doesn't relate to getting to those people. In fact, the government could decide that they're going to do a mailer to every person in the province, with whatever propaganda they were going to use, and mail it directly to every person. This bill doesn't apply to that.

I really don't know why this bill is in existence. Of course, with this bill, you wouldn't put it on the front of the *Toronto Star*; you would send it to every home individually, and it doesn't have to pass one test. It's just beyond me that they would consider coming up with an amendment that would totally negate the whole bill. I don't know what we're restricting now. I suppose we could say that you could actually put an ad on Citytv and have them list—I know it would cost a lot of money—every person in the province and now it's directly to them and it's not considered advertising any more. It just doesn't make sense to me.

1550

Mr Korn: TV ads are caught under section 2. So that's an issue—

Mr Hardeman: It's OK. They can't do it on television, so it will have to be direct mailing.

Mr Arthurs: The clear intent is matters such as drivers' licence renewals that would go out in batches at particular times of the month. I believe renewals come up at month's end, so they're not necessarily staggered. They may be staggered over the month, but they're in such quantity that one might want to pose that those are bulk mail. They're a large quantity.

The intention here is to ensure that type of business can go on, but it's obviously not intended to be advertising. It's also not intended to be a mass mailing from the context of government material save and except for the individual function of the business of government.

That's the clear intention of this particular clause, to avoid that type of confusion at that time.

Mr Kormos: We understand that, but that observation on your part doesn't address the reality, because there's a difference between mass mailing and bulk mailing, and you've gone to great lengths to define bulk mailing as being unaddressed mail. A mass mailing is—well, it's precisely that. It's a campaign conducted via the mail to addressees. You're saying here that the government can conduct—what we're understanding rather, not what you're saying. What we're understanding is that the government can conduct a mass mailing, as long as it's not a bulk mailing, of the most provocative, partisan, expensive, taxpayer-funded self-promotion imaginable, and I find that shocking.

Mr Delaney: I understand the feelings of Mr Kormos and Mr Hardeman. I would caution them, however, that if they wish to include bulk mail, that would also include, I assume, mail emanating from their offices, which is also individually addressed. At what point do you stop in, for example, defining bulk mail as the response to a petition, the response to an e-mail campaign? What you're proposing is administratively unworkable and unfeasible for the Provincial Auditor to be able to referee in any way.

Mr Hardeman: First of all, just in clarification to Mr Delaney, I've been around here long enough to know that the goods that are mailed from my constituency office are in fact not government mailings. To somehow—

Mr Kormos: At one point they might have been.

Mr Hardeman: At one point they might have been, but I can point out that in this bill how bulk mailing can be done is not going to impact a constituency office or any member of the Legislature.

My concern is that it appears to me the government's intent is to make sure we can send mail out; Mr Arthurs and the parliamentary assistant mentioned the drivers' licence renewals. I think it's quite obvious that if it's requested mail, if the receiver wants the information that's being sent, that makes it appropriate, that's not government advertising.

But if the government decides, "This is what I would like people to know"—they haven't asked for it, they haven't done anything except be a citizen of this province and have an open mind—if the government decides they want to send them advertising, we can do that under this bill. With this amendment we can do that by putting their name on the envelope.

I think it negates the whole bill. If the government is looking to allow the type of mailing the parliamentary assistant talks about, I think they've got to have a different way of wording it because this just opens it up that any mailing can be done without approval of the Auditor General's office.

I don't think that was the intent of the government, but that's what this amendment is going to end up doing.

The Chair: Is there any further discussion?

Mr Arthurs: I appreciate the comments from the members opposite in committee, and I'm satisfied by

virtue of counsel from the ministry that we're going to be able to meet the objectives we have, in particular with respect to the bill, and acknowledge that there are always questions about aspects of a bill that one may find reason to query.

The Chair: Is there any further discussion?

Mr Hardeman: Could we have a recorded vote on this one, Madame Chair?

The Chair: I will now put the question on the amendment. All those in favour?

Ayes

Arthurs, Craitor, Delaney, Racco, Van Bommel.

Nays

Hardeman, Kormos.

The Chair: That's carried.

There being no further amendments to section 3 before the committee, I'll now put the question.

Mr Kormos: Recorded vote.

The Chair: Shall section 3, as amended, carry?

Ayes

Arthurs, Craitor, Delaney, Racco, Van Bommel.

Nays

Hardeman, Kormos.

The Chair: Section 3, as amended, is carried.

On section 4, there's a government motion.

Mr Arthurs: I move that section 4 of the bill be amended,

(a) by striking out "Provincial Auditor" in subsection (2) and substituting "Auditor General"; and

(b) by striking out "Provincial Auditor's" in subsection (4) and substituting "Auditor General's".

The Chair: Any discussion? I will now put the question on the amendment. All those in favour of the motion? All those opposed? The motion is carried.

There being no further amendments to section 4 before the committee, I'll now put the question. Shall section 4, as amended, carry? All those in favour? All those opposed? It's carried.

On section 5 there is a government motion.

Mr Arthurs: I move that section 5 of the bill be amended by striking out "Provincial Auditor" in the three places where it appears and substituting in each case "Auditor General."

The Chair: Any discussion? I'll now put the question on the amendment. All those in favour of the motion? All those opposed? That motion carries.

There being no further amendments to section 5 before the committee, I'll now put the question. Shall section 5,

as amended, carry? All those in favour? All those opposed? That carries.

On section 6 there are two government amendments and one amendment from the official opposition. Is there a mover for the first government motion?

Mr Arthurs: I move that subparagraph 1 iv of subsection 6(1) of the bill be amended by adding at the end "or to promote any economic activity or sector of Ontario's economy."

The Chair: Any discussion?

Mr Hardeman: Madame Chair, if I could have the parliamentary assistant explain the intent of this amendment.

Mr Arthurs: The intent is to ensure that there are matters whereby governments can continue to promote economic activity, probably the example being things like Foodland Ontario, which might have escaped the capacity to do that without this inclusion.

Mr Hardeman: Thank you.

The Chair: Any further discussion? I'll now put the question on the amendment. All those in favour of the motion? All those opposed? That motion is carried.

The next motion is a PC motion. Mr Hardeman, did you want to move that?

Mr Hardeman: I move that subsection 6(2) of the bill be struck out.

The Chair: Any discussion?

Mr Hardeman: As we heard this morning from the minister, the bill presently allows advertising to be done without all the scrutiny of other advertising, provided the advertising is being disseminated or provided by, and getting paid to, someone other than an Ontario broadcaster. So as long as you can broadcast on the other side of the border, it can come in, and the government can do whatever they wish, provided it isn't going to our broadcasting. We think that's wrong. Either it should happen or it shouldn't, but it shouldn't give preference to American broadcasters. That's in fact the essence of what the section does.

1600

Mr Arthurs: I can't support the amendment. This, in effect, by striking this, would preclude the government from advertising outside the jurisdiction of Ontario using the Premier or a minister of the crown, whether that be elsewhere in the country or internationally. The minister spoke this morning of the importance of having a figure of importance in government, the capacity to provide that type of exposure on an international scene.

Mr Kormos: I'm going to support the Conservative amendment. First of all it's probably, in most instances, like those ads on TV where, if you need a lawyer if you had a slip and fall, you call this number and then there's fine print that says, "This is not a real lawyer; this is an actor" doing the promotion.

I suspect that in most cases the government will be shooting itself in the foot by using the Premier or any of his cabinet. They're probably far better off hiring professional actors, especially after what we saw this morning with the difficult conditions that are being faced by

people in the film industry, all the more so. We should be hiring trained professionals to do promotions of Ontario and not let ersatz, wannabe thespians access the airwaves.

I support the amendment. Also, the section could have been written—clearly, the primary target audience is located outside. The amendment clearly could have been written—look, there has to be an exercise of caution used by the government if it really believes in the spirit.

We know darn well that a broadcast emanating out of Detroit or Buffalo is going to flow over into Ontario big time—big markets for those particular networks. I have no qualms about seeing something that's clearly broadcast in California—or a billboard or whatever—or Texas. Florida would be a different problem. You've got a lot of Ontarians in Florida, especially this winter, I suspect, although as long as the blockade is being imposed upon Cuba, I say Cuba, si; Florida, no.

The section could have been written to protect against the overflow, the spillover. It wasn't, so I'm supporting the amendment.

Mr Delaney: I couldn't support this amendment. This would preclude the government from, as an example, advertising for additional film business on a Los Angeles television station, using an image of the Premier or anyone else, which may or may not be carried by a particular cable provider. It is, again, administratively unworkable and patently unfair to the government's legitimate business development practices.

Mr Hardeman: I have a bit of a problem because I'm not sure that using the Premier would in fact encourage business from Los Angeles. I don't have any problem with the government having the ability to use whatever means they can to attract more investment to Ontario. I'm really concerned with the section that has to do with what we would do with the media outside our jurisdiction. The primary audience would be written as obviously the market we're in, but the only audience the government has an interest in is that secondary audience that's on our side of the border, listening to the commercial.

We can make a case for it, that we're doing it because we wanted to encourage all the farmers in Wisconsin to come to Ontario because things are so good here for Ontario's farmers, and the Premier is telling us that on the Buffalo radio or TV station, but in fact it's going to more Wisconsin viewers than to Ontario viewers. But the intent is to tell Ontario viewers how good agriculture is in Ontario.

So I think this wrong, because it really does allow you, using media outside of Ontario, to get the benefit without having the restrictions that you're putting on advertising in the province. I think it's a loophole that would be used at an opportune time. I think it's better not to be in the legislation.

Mr Craiton: I have just a couple of short comments. Having spent 13 years on city council, and coming from Niagara Falls, which is primarily a tourist industry, I don't know how many times we utilized advertising

across the border, whether it's New York state or Pennsylvania, to attract people into our community. It wasn't uncommon to have the mayors as part of that, sometimes a councillor. It was always appropriate, and we derived a lot of benefit from it.

I guess we're so close to the Americans now, and with satellites, you're not far away from talking to anyone in the States. The point I'm making is, I saw the benefits we had as a community, just in our own area, utilizing some of our elected officials to try to promote Americans to come into Niagara Falls. Our mayor would speak on it: "Here are the reasons. Here are the benefits that we offer to the community."

So I have no problems with the intent of this. The intent is—and I think of everyone sitting in this room—how do we make Ontario a better place, how do we make it more viable, how do we bring more people into Ontario, how do we make it more sustainable for tourism? I think the addition is well-meaning and it's appropriate, and I've seen it used, like I said, in my own local community, where it's worked well, so I'm certainly going to support it.

The Chair: Any more discussion?

Mr Hardeman: Just one final comment. I'm not disagreeing with Mr Craitor. I guess my problem is, if that works well on the New York side of the border, it likely works well on the Ontario side of the border too. Why is this legislation prohibiting it in Ontario and not prohibiting it just on the other side of the border, if it's the right thing to do?

Obviously the government feels it's not the right thing to do to use the Premier or any other elected official to encourage our people's spending trends. I don't know why we would then use that same thing just across the border. It just doesn't make sense where I come from. With that, enough said.

Mr Mario G. Racco (Thornhill): My understanding of this section is that we are trying to avoid that politicians try to promote themselves within the jurisdiction where we are elected. But trying to promote Ontario outside of Ontario, surely everybody supports that idea. As I understand it, that's what that section does and what it's supposed to do. Nobody can sell the province of Ontario better than the leader, whoever it happens to be. But if the objective is to try to not use it for political reasons, as unfortunately it was used in the prior administration, then I think this section is very useful and should stay.

Mr Kormos: Just a final observation, once again, and I hear Mr Racco say the previous government used these tactics, but understand that they were soundly defeated. So one has to question, then, whether these tactics are even workable.

The Chair: Is there any further discussion? I'll now put forward the question on subsection 6(2) of the bill.

Mr Hardeman: Recorded vote, please.

Ayes

Hardeman, Kormos.

Nays

Arthurs, Craitor, Delaney, Racco, Van Bommel.

The Chair: The motion is lost.

Our last motion on this section is subsection 6(3).

Mr Arthurs: I move that subsections 6(3) and 6(4) of the bill be amended by striking out "Provincial Auditor" in the two places where it appears and substituting in each case "Auditor General."

The Chair: Any discussion?

I'll now put forward the question on the amendment. All those in favour? All those opposed? That's carried.

There being no further amendments to section 6 before the committee, I'll now put forward the question. Shall section 6, as amended, carry?

Mr Hardeman: Recorded vote.

Ayes

Arthurs, Craitor, Delaney, Racco, Van Bommel.

Nays

Hardeman, Kormos.

The Chair: That's carried.

Section 7.

Mr Arthurs: On section 7: I move that subsection 7(1) of the bill be amended by striking out "Provincial Auditor" and substituting "Auditor General."

The Chair: Any discussion?

I'll now put forward the question on the amendment. All those in favour of the amendment? All those opposed? The motion is carried.

1610

Mr Kormos: Point of order, Chair: I would invite the parliamentary assistant to move amendments 11, 12 and 13, and then the Chair, with the consent of the committee, could put those respective sections collectively to the committee.

The Chair: As we've begun and we're three quarters of the way through, I'm going to rule that we're going to do these in sequence, as we've begun this way.

Mr Kormos: I appreciate it's a little more complicated. You have to keep on top of things.

The Chair: I think it will be just as quick.

On the motion we have before us, 7.1 of the bill, any further discussion? I'll put the question on the amendment. All those in favour of the motion? All those opposed? That's carried.

There being no further amendments to section 7 before the committee, I'll now put the question.

Mr Kormos: Invite debate, please.

The Chair: Yes. Any discussion? No discussion. Shall section 7—

Mr Kormos: See, you thought it was going to be easier.

The Chair: —as amended, carry? All those in favour? All those opposed? Section 7, as amended, is carried.

I don't need to be confused, Mr Kormos. It can happen very easily.

There's a government amendment to section 8.

Mr Arthurs: I move that section 8 of the bill be amended,

(a) by striking out "Provincial Auditor" in the two places where it appears in subsections (1) and (5) and substituting in each case "Auditor General"; and

(b) by striking out "Provincial Auditor's" in subsection (3) and substituting "Auditor General's".

The Chair: Any discussion? I'll now put the question on the amendment. All those in favour of the amendment? All those opposed? The motion is carried.

There being no further amendments to section 8 before the committee, I'll now put the question. Any discussion on that? Shall section 8, as amended, carry? All those in favour? All those opposed? Section 8, as amended, is carried.

On section 9 we have a government motion.

Mr Arthurs: I move that section 9 of the bill be amended by striking out "Provincial Auditor" in the six places where it appears and substituting in each case "Auditor General".

The Chair: Any discussion? I'll now put the question on the amendment. All those in favour of the motion? All those opposed? That motion is carried.

Any discussion on that?

Mr Hardeman: I have a question, I guess, in order to facilitate more efficient and effective government. Obviously we all have a great interest in that. To the legal branch, I noticed in the last amendment that was passed the amendment actually reads to strike it out in as many places as it appears. I wonder why it is that we couldn't have had an amendment at the start or at the end of this whole thing saying "strike every place that it appears in the bill" and replace it with the other words and prevent the need for Mr Kormos to have gone to such great lengths to try and expedite the process and so forth. We could have then just had it all done in one fell swoop. It really wouldn't make any difference, because that's all the majority of these amendments are. Why not just have one motion for that?

Ms Laura Hopkins: The amendment could have been drafted in either fashion. It would be for the Chair of the committee to decide whether the one global amendment would be in order.

Mr Hardeman: Am I to understand this whole afternoon and the time being spent on this is the responsibility of the Chair and it's her fault that I'm going to be late for dinner?

The Chair: Mr Hardeman, I can't believe you wouldn't want to spend more time with me. I can only

call them as I see them. What I had in front of me was separated. But thank you for your interest.

Any further discussion? There being no further amendments to section 9 before the committee, I'll now put the question. Shall section 9, as amended, carry? All those in favour? Any opposed? That's carried.

Section 10: Is there a mover for the motion?

Mr Arthurs: I move that section 10 of the bill be amended by striking out "Provincial Auditor" in the two places where it appears and substituting in each case "Auditor General."

The Chair: Any discussion? I'll now put forward the question on the amendment. All those in favour of the motion? All those opposed? That motion is carried.

There being no further amendments to section 10 before the committee, I'll now put forward the question. Shall section 10, as amended, carry? All those opposed? Section 10, as amended, is carried.

Sections 11 and 12: Are there any comments or questions on sections 11 or 12 of the bill?

Mr Kormos: I have comments on section 11, so we'll just hold on before you decide to call them collectively.

This, of course, is immunity to those who would publish, distribute etc etc basically, I'll say, illegal advertising: advertising that contravenes the act. I'm not sure why you'd want to protect—maybe you wouldn't want to put an onus on a company that did mass distribution of material to ensure it was legal. Then again, we've got lawyers here who tell us that that exemption or immunization doesn't necessarily apply, for instance, to libellous material; it doesn't necessarily apply, depending upon the circumstances.

When you've got this scenario, why do you want to immunize in this manner people who would distribute what I call illegal material? It seems to me that—first of all, I'd like to know what penalty section they'd be prosecuted under, in any event, and what is being contemplated. Are you talking about the prospect of litigation? I don't know. Are we immunizing against provincial offences prosecution or against civil litigation? We need some fleshing out of this—very quickly. I'm not going to belabour it.

Mr Arthurs: Perhaps we could ask legal counsel. I think you already have come to the conclusion on the principal intent. Obviously, it's to not have some mass distributor do a bulk mailing, by virtue of having taken on the role, and then, if it's found that what the government had done was illegal, be held liable. That just doesn't seem to be very appropriate.

Mr Kormos: Held liable how?

Mr Arthurs: Your further question—that's probably where legal counsel can help much more than I possibly could.

Mr Korn: The intention here is to protect a publisher, displayer, broadcaster or distributor from any possible proceeding based on the sole ground that the ad or printed matter hadn't been vetted or had been sent out contrary to the auditor's ruling. These third parties aren't going to have any capacity to check whether the govern-

ment did what it was supposed to do, so this is intended to protect those third parties from any civil or other claims.

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Mr Kormos: This is interesting—I hear you—but there's no offence in the bill, that I'm aware of, for a government or a player in that government, for instance, contravening the act; that is to say, not submitting something and still having it published, or having something denied by the Auditor General and then publishing it anyway. So there's no offence for the party doing it. I understand the effort is clear to try to avoid an offence or a liability on the intermediary, on the conduit.

Take a look a little bit earlier and you see that what happens is that the auditor "shall notify the Speaker about any contraventions of section 2...." Are you suggesting that there are general penalty sections of the Provincial Offences Act that are applicable here?

Mr Korn: I was simply trying to explain section 11.

Mr Kormos: OK. So am I correct that there's no offence here by anybody who knowingly, blatantly, disdainfully, scornfully violates this statute once it becomes law? I don't see any part where somebody can swear out an information under the Provincial Offences Act and haul people into court, where the scoundrels belong if they're scofflaws. Is there anything in the bill?

Mr Korn: I'm not sure exactly what your question is, Mr Kormos.

Mr Kormos: If I'm breaking the Highway Traffic Act going home on the QEW, I know what happens if I get caught: I get charged with speeding under the Highway Traffic Act, on a good day. Now, if a government official breaks, violates, contravenes—because the drafters use the word "contravene" in here—Bill 25, I don't see anything equivalent to "It is an offence to drive in excess of 100 kilometres an hour," or whatever the language is. Are there any offences in Bill 25?

Mr Korn: There are no offences sections in the bill.

Mr Kormos: You see, what I'm worried the only outcome that could possibly happen is for the Auditor General to notify the Speaker in an annual report of contraventions.

Now, Chair, catch this. Listen, please. We saw a Speaker during the last government tear a strip off that government on the basis of it being in contempt for having used public monies for what amounted to partisan advertising. Mr Hardeman will recall that. He may be the only one here in the room who will actually specifically recall that. What I'm worried with here is that Speakers, as you know, and the Clerk—no, we won't put the Clerk in that position. Clerks are eager to advise Speakers not to interpret the law. That's an annoyance to some of us who have had occasion to want to point out to the Speaker that something's illegal. The Speaker would say, "It's not my job to interpret the law." You saw your current Speaker, in fact—a wonderful example of what it means to be a skilled, professional, dedicated Speaker, Speaker Curling—at the beginning of this government's mandate, on a couple of occasions, say, "It's not my job

to interpret the law." Federal Speakers have done the same.

Do you understand what the bill does in that regard? By creating a statutory contravention that can't be prosecuted, for which there's no remedy cited—think about this, Mr Hardeman—this bill is the exit point for a Speaker to say, "Well, I've received the Auditor General's report, but it's not my job to interpret Bill 25. I can't, as Speaker. That's for the courts to do." There are people here who know exactly what I'm talking about. Speakers say that it's the court's job to interpret the law, not a Speaker's job. Holy moly; this isn't just the Mack truck loophole, this is the Catch-22 of all Catch-22s, because this may create an even worse scenario than what the common law basically provides for. That's where Speakers can find, as Speakers are wont to, a government, a minister or a ministry in contempt of Parliament for egregious use of public funds for self-promotion.

I appreciate counsel's position on this, because I can't find a penalty section. I can't find any remedies that are available. For instance, there's nothing here that says—and I'm not talking about inadvertence, right? I'm not talking about somebody screwing up, because that happens. Governments are wont to screw up. I'm talking about somebody maliciously, overtly saying "Screw Bill 25. This mailing's going out."

One of the remedies might be to make the political party that happens to be the government of the day pay for the advertising. It's been done. Another remedy might be to prosecute that person and send them to jail; maybe a place like Millhaven, where they share a cell with Conrad Black or, if they're a woman, with Barbara Amiel, both of whom very much belong in jail because they're thieves and crooks, or with John Roth from Nortel, who's another crook, or the guy from Royal Group up in Woodbridge, right? That guy from Royal Group is another crook—six million bucks he made on that one flip of land.

Mr Racco: Chair—

Mr Kormos: What's the matter? Go ahead; you've got some whining to do. Go ahead; say, "Point of order."

The Chair: No, no. I have a speakers' list. Are you finished?

Mr Kormos: No, I'm not done yet. But maybe he has a point of order.

The Chair: I doubt that. I'm going to let you finish.

Mr Kormos: Thank you. The problem is that a blatant, egregious contravention of this law will never put the culprit in jail, along with crooks like John Roth, Conrad Black, Barbara Amiel or those guys from Royal Group who stole from their shareholders and company. It's just an observation. I suppose that's why I'm not going to be supporting the bill, among other reasons.

The Chair: Mr Arthurs.

Mr Arthurs: First, we are on section 11 specifically, but I appreciate the broader discussion, so we can complete it at this point.

Section 11 does deal with the intermediary. It's some protection for them from the context of having to accept

any liability by virtue of having taken on a particular function. I think it's appropriate in the context of the legislation for section 11 to be there.

On the broader question, though, about what are the remedies, sanctions or other what one might refer to as penalties, even if it's not a provincial offence in the formal sense, where you've got four or five copies—like when you're pulled over in your car and they give you your copy and their copy and the copy that goes downtown and all those kinds of things. I think there are a couple of matters within the bill that address that, and some other things they tend to address as well.

First, the fact that it has to be vetted and that there is legislation is a form of protection from the use of advertising and printed material in an inappropriate fashion.

Secondly, if the Auditor General determines that what's before him doesn't meet the criteria, then he can demand that it be revised, if one wants to move forward with that. That's step 2 that's available.

If, in effect, it were to escape both or either of those for some reason, he will present an annual report. He has the capacity as well to present a report at any time. So if he felt there was advertising or broadcasting going out, he could present to the Legislative Assembly at any time.

To my limited knowledge, ministers have been known to be called upon to resign as ministers for activities that might be deemed far less significant than the deliberate breach of a piece of legislation. In this case, I would suggest that they would be called to task in the Legislature, as the minister in charge, if in effect the legislation was breached so blatantly, as Mr Kormos suggests.

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The wilful breach of law by any government office, whether it's political or administrative, in the sense of a deputy minister who would have charge of the ministry, is considered a serious matter. It would be a serious matter in the context of their employment and their professionalism, and that's separate from what might be considered a serious matter in the political arena in which we all work.

Although there is no offence provision, no formalized penalty fine provision, there are a variety of processes and sanctions that could come into play, both politically and administratively, if, as suggested, someone were to wilfully breach the legislation.

The Chair: Mr Racco, did you have anything further to say?

Mr Racco: It ain't worth it, Madam Chair. Thank you.

The Chair: Anybody else?

Mr Hardeman: I guess I really do have a problem with this section. As Mr Kormos pointed out, there are no penalties, so there are no consequences to one's actions.

My concern is that the only possibility of some tension in the system, some way of monitoring after the Auditor General has said that it contravenes the act, the only way a penalty can be put in place would be if a broadcaster or anyone in the media actually circumvented their licence, because they did something illegal. So they might be a little cautious about saying, "Well, my gosh, this looks

pretty blatantly against the law but we won't put it on the air because if it goes on the air we may get charged for breaking the law." They would be covered through their licence. There is nothing in this bill that holds anyone else accountable for anything they do, except that it's going to be reported that they did it.

Mr Kormos brought up the issue about the former government, when the Speaker ruled on some advertising he deemed inappropriate. The Speaker didn't say it was contempt of the Legislature; he said there was a *prima facie* case made for it. The Legislature got to debate the issue and the Legislature got to decide whether in fact there was contempt of the Legislature. This would appear to me to circumvent that, because this never becomes something the Speaker rules on; it's just that the Auditor General brings in a report and lays it on the table. How do you get a legislative debate on whether in fact there is a case or there isn't?

I think this actually makes the whole thing weaker rather than strengthening it. I'd be the first to say there is something needed to curtail government advertising for the wrong purposes. I don't have any problem with that. But I don't believe this bill is doing that. This section is the only thing that deals with some tension in the system; not a lot, but some tension in the system. We're going to say no one, being an accomplice under the act, is going to be charged, even if they knowingly did it. If they knew there was a report from the Auditor General that said this is definitely wrong according to the act, they'd say, "That's OK. If you want me to do it, I'm immune from penalty, so go ahead, she's on the air." I think this really is the one clause that takes any tension out of the system.

Again, as I said earlier on one of the other areas, it really doesn't seem to be doing what the government's intent was. At least, it's a long way from doing what the government has been telling the public its intent is. I'm not saying it isn't the government's intent, but it sure isn't the message that's been going out. This was going to curtail government advertising of a partisan nature and, with these kinds of loopholes, I don't think it's going to do that at all. In fact, I think it's going to provide the ability to do even more of it, but the public won't be looking quite as closely because we have this bill that prohibits partisan advertising. There is no tension in the system for anyone to ever be held accountable for what they did except that once a year or maybe, as Mr Arthurs says, five times a year, a report comes in that says, "We didn't approve that advertising that went out." But it will have long since—

Mr Kormos: The auditor's report.

Mr Hardeman: Yes. We got that big book yesterday from the Auditor General that spoke about all the things that have happened in government that weren't appropriate, but I don't see much action being taken. I think that's exactly what would happen here, and this clause points out the fallacy of the whole bill.

Mr Delaney: Interesting discussion. I point out to Mr Hardeman that advertising is a government resource and that the sanctions in this bill are substantially the same as

for any other type of government resource—for example, the way in which employees use their time, the manner in which people are deployed and the manner in which money is spent. It is just a government resource and, as such, this authorizes the Provincial Auditor to treat government advertising as if it were the same resource as time, people and money. That's the intent. The sections that you refer to are intended to provide immunity to a third party who publishes, displays, broadcasts etc to communicate with the public. Those sections on immunity are intended to indemnify people who can say, "I was just following orders," if they are indeed a third party—

Mr Kormos: That's a very bad choice of words.

Mr Hardeman: If that's what it is, I'm with you. That's exactly my concern.

Mr Delaney: Or they would call it "following instructions."

Mr Hardeman: If that's what it is, this bill is not what you're telling the public it is.

The Chair: Could we stop the cross-debate? Mr Delaney, you still have the floor.

Mr Delaney: The point that I wish to make here—again, I'll repeat it—is that the sanctions in this bill that govern advertising are substantially the same as those that govern any other type of government resource as reviewed by the Provincial Auditor. It simply gives the Provincial Auditor jurisdiction over the audit of the use of government advertising, as he does over the use of government money in his examinations for value for money, as he does over how people use their time and what people are used for by the government.

The Chair: Mr Arthurs, I think you're my last speaker at the moment.

Mr Arthurs: Very quickly, I appreciate the debate around the matter and the specificity of penalty, as articulated by Mr Kormos and responded to by legal counsel.

On the broader question, I need to draw attention back, if I could, to subsection 9(4), just to be clear about the sanctions that could be brought into play. In subsection (4) it says, "The Speaker shall lay each annual report or special report of the Provincial Auditor before the Assembly forthwith if it is in session or, if not, not later than the 10th day of the next session."

It's not a matter of just presenting it to the Speaker; it's built into the legislation that it must be presented to the assembly. So the capacity for that debate to occur, and the capacity for members of the assembly to make it well known if, in effect, there's a matter of concern—that can occur, and the processes that occur in that forum can then take their course. The provisions are there to ensure that it does get to the assembly, which does have ultimate ownership for the actions of government.

Mr Hardeman: I have a couple of things. I've been around here a while and I realize that when legislation says, "to lay on the table for the assembly," that's exactly what it is. But it does not allow or provide for debate on that item. It's there for your review, if anyone in the Legislature wishes to use that information during ques-

tion period to get some discussion going on some of the issues. But it doesn't come for a debate, whether it's right or wrong. Someone gets to answer questions, but there is no opportunity for the Legislature to debate the merits of it and to sanction the people for it. I don't think that's quite the case.

The other thing with Mr Delaney's comment that this is no different than the Auditor General's review of all other government expenditures: If it's the same as all the other government expenditures, that makes this bill even more redundant, with even greater loopholes, because the Auditor General has always had the power to look at government advertising and whether it is, in his opinion, a good expenditure. With this, you're asking another body to review whether it is government or partisan advertising. They get to make that decision one way or the other, but there's absolutely nothing in the bill to hold anyone to account for the decision that the Auditor General makes.

Mr Delaney: This bill gives the Auditor General the very specific mandate to shine light on it.

The Chair: Mr Delaney, Mr Hardeman has the floor.

Mr Hardeman: This bill has absolutely nothing in it to hold the government to account for the Auditor General's recommendation—absolutely nothing. In fact, even if the Auditor General just happens to be too busy reviewing hospitals and school boards, if he doesn't get back in time with a comment to say that this is partisan advertising, then the government can assume it's OK and go on with it. Now, there are not many other parts that get that.

1640

Incidentally, on no other department is the Auditor General asked to comment on the merit of the expenditure prior to it being made. He audits the expenditures for value for money and for appropriate expenditures after the year is complete, not to send it for him—when the minister of public works and transportation decides to hire five new people, he doesn't have to ask the Auditor General whether that's a wise expenditure. That comes out in the audit, when they find out that he hired too many people or not enough, after they have that done.

This is slightly different, when you're asking his opinion and then providing absolutely no recourse if nobody is listening to his opinion and no penalty if they don't. I think it's window dressing.

Mr Delaney: Just one last comment. Mr Hardeman is incorrect. The bill requires the Provincial Auditor to report annually to the Legislative Assembly on matters related to the proposed act, particularly any contraventions of the act. The bill requires the Provincial Auditor to report annually on government expenditures for reviewable items and authorizes the Provincial Auditor to report on government advertising expenditures in general; hence, it does treat government advertising as any other resource under their umbrella of a mandate.

Mr Hardeman: Obviously, I had nothing better to do this afternoon than have this debate, so—

The Chair: Are there any other comments or questions?

Mr Hardeman: Yes, Madam Chair.

The Chair: Now you've indicated you'd like to speak. OK. Mr Hardeman, you have the floor.

Mr Hardeman: I don't want to leave on the record—I might have said something that I didn't get the right meaning out. I've said all along that the Auditor General has had the ability to look at all government advertising at any point in time that they wish to do that and report to the Legislature on whether they think that was appropriately done. They can audit government ministries for advertising the same as for anything else. I'm not aware whether they've ever done it before, whether they do it or whether they want to do it.

What I'm saying is that this is requesting him to have a look at it prior to it being spent. If he says it's not going to be appropriately spent, that it's going to be inappropriately spent, there is nothing in the bill that says, then, that the government can't do it. It says that you shouldn't, and you can change it a bit, and you can ask him again. If, in the end, you still want to do it, there is no penalty for going totally against the auditor's recommendation.

At the end of it, yes, the auditor, once a year or whenever they feel is appropriate, must lay on the table their Provincial Auditor's report, which will include a section that says, "Three times in the past year the government went against my recommendation. I believe that that was partisan advertising, but they did it anyway." Then, as the opposition, I'm going to say, "Oh my gosh, how could the government do that?" And the government will say, "We thought it was appropriate." That's it.

There's no way of being held accountable for it. It's no different than it is today, so I don't know what this bill is supposed to accomplish.

The Chair: Any other comments or questions on sections 11 and 12 of the bill?

If not, shall sections 11 and 12 carry?

Mr Hardeman: Recorded vote.

The Chair: A recorded vote has been requested. Do you want a recorded vote on each section separately?

Mr Kormos: Section 11 first, please.

The Chair: Shall section 11 carry?

Ayes

Arthurs, Craitor, Delaney, Racco, Van Bommel.

Nays

Hardeman, Kormos.

The Chair: Shall section 12 carry?

Ayes

Arthurs, Craitor, Delaney, Racco, Van Bommel.

Nays

Hardeman.

The Chair: Sections 11 and 12 have carried.

On section 13: There is a government amendment. Is there a mover?

Mr Arthurs: I move that section 13 of the bill be struck out and the following substituted:

"Amendments to the Auditor General Act

"13(1) Section 2 of the Auditor General Act, as re-enacted by the Statutes of Ontario, 2004, chapter 17, section 4, is amended by adding 'the Advertising Commissioner' after the 'the Auditor General, the Deputy Auditor General'.

"(2) The act is amended by adding the following section:

"Appointment of Advertising Commissioner

"8.1(1) Subject to the approval of the board, the Auditor General may appoint a person to act as Advertising Commissioner.

"Duties

"(2) The Advertising Commissioner may exercise such powers and shall perform such duties as the Auditor General may delegate to him or her under subsection 24(2).

"(3) Subsection 12(2) of the act, as amended by the Statutes of Ontario, 2004, chapter 17, section 14, is amended by adding the following clause:

"(g) expenditures for advertisements, printed matter and messages that are reviewable under the Government Advertising Act, 2004.

"(4) Section 12 of the act, as amended by the Statutes of Ontario, 2004, chapter 17, section 14, is amended by adding the following subsection:

"Report re government advertising

"(4) In the annual report, the Auditor General may report on expenditures for government advertising generally.

"(5) Section 24 of the act, as re-enacted by the Statutes of Ontario, 2004, chapter 17, section 24, is amended by adding the following subsection:

"Same

"(2) The Auditor General may delegate in writing to the Advertising Commissioner or to a person employed in the Office of the Auditor General any of the Auditor General's powers and duties under the Government Advertising Act, 2004 and may impose conditions and restrictions with respect to the delegation.

"(6) Subsection 27(1) of the act, as amended by the Statutes of the Ontario, 2004, chapter 17, section 27, is amended,

"(a) by adding 'the Advertising Commissioner' after 'the Auditor General, the Deputy Auditor General'; and

"(b) by striking out 'under this act' and substituting 'under this or any other act'.

"(7) Subsection 27.1(1) of the act, as enacted by the Statutes of Ontario, 2004, chapter 17, section 28, is amended by striking out 'The Auditor General, the

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**Standing committee on
the Legislative Assembly**

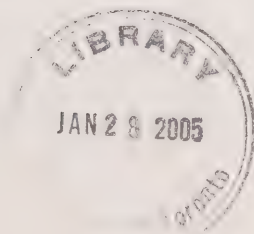
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Thursday 16 December 2004

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 16 décembre 2004

The committee met at 1605 in committee room 1.

ELECTION OF CHAIR

The Clerk of the Committee (Mr Doug Arnott):

Honourable members, it is my duty to call upon you to elect a Chair of the committee. Are there any nominations, please?

Mrs Donna H. Cansfield (Etobicoke Centre): I'd like to nominate Mr Delaney for Chair of the committee.

The Clerk of the Committee: Are there any other nominations?

Mr Ernie Hardeman (Oxford): I'd like to nominate Norm Miller.

The Clerk of the Committee: Are there any further nominations?

I'll now put the question on the first nomination. All those in favour of Mr Delaney as Chair of the committee?

A majority of votes being in favour of Mr Delaney, I declare Mr Delaney duly elected Chair of the committee.

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OMBUDSMAN ONTARIO

The Chair (Mr Bob Delaney): Humbled as I am by the awesome responsibility conferred by the office, I now call the meeting to order.

The second item of business is a debriefing of the Ontario Ombudsman, Mr Clare Lewis. Mr Lewis, welcome.

Mr Clare Lewis: Thank you, Mr Chair and members. I must say that I have a son who is a policy manager in the Democratic Renewal Secretariat of the Ministry of the Attorney General. I'll have to tell him, having watched your recent election, that I saw little sign of alternative or proportional representation in the election.

I also have to tell you that I had evidence today that when you're gone, you're gone. I came back into the building and was, of course, stopped by security. I told him I was the Ombudsman and I was to meet with you, and he looked at me. "What's your name?" I told him. "Do you work for the government?" "Sort of, yeah." Anyway, I finally realized that he was aware there was a new Ombudsman and I didn't have the right name. But I talked my way in.

I'm very grateful for your allowing me to come before you today. I know it's the end of the session and everybody wants to go, so I'll try to be brief. It's not easy for me but I will try.

May I say that today there was a very generous statement made about me in the House by Mrs Jeffrey, and I appreciate that. I intended to be present when Mr Marin was introduced to the Legislature yesterday. I was five minutes late, but there it is, and I'm sorry about that.

I also want to say to you that Mr Marin will be the sixth Ombudsman of Ontario; I'm the fifth. The four prior Ombudsmen were all appointed through a non-competitive, open process. They were all appointed—properly, of course—by the government coming up with one or more candidates, going around to the various parties and getting consensus, and then an appointment occurred.

In the last government, it was determined that a full, open, competitive process would take place. Despite my age, I decided, uncomfortable as it was, to get into an open, competitive process that I could lose. I presume to say that it worked very well, I hope. I am confident in saying that the process was similarly followed with a smaller committee from this committee rather than the whole, which I appeared before five years ago.

When I was appointed there were some 85 candidates short-listed. I understand that a great many more applied this time. I presume to say that that's because people felt some confidence in the office and wanted to be in the position of leading it. I'm not sure how many or who were in fact interviewed, but I have been told that there were some very credible candidates, and that encourages me.

I just wanted to say that although I've known him since he was, as I like to say, a pup—I think he's only 39 now—the appointment of Mr Marin was a very fine appointment. I believe very much in this office that I hold. I came in with a specific view of what I wanted to achieve. I think, with my staff, we've been able to achieve it in building relationships with the public service, the Legislature, the government, the public and also—the only way that that could happen—rebuilding relationships within the office so that it is a well-functioning organization, one that I personally am proud to hand over.

But the time has come for me to go. I've had a lot of jobs, and I have stayed at none of them for very long times, including the bench. I think that it will be taken to

a new level, one that I'm sure will be very positive. What I'm very happy about is that I will leave my last professional career without fear of looking over my shoulder at what's happening to the organization—is it being run well? I'm confident that it will be and that he will be a fine officer of this Legislature. I am really pleased that you made the appointment you made. I think it was a very good one.

I wanted to say to you that, over the five years, we have, I think, strengthened relations with government to a considerable degree, and with the Legislature and the public service to the degree that I only appeared once before this committee.

Mr Gilles Bisson (Timmins-James Bay): That's a record.

Mr Lewis: Yes, yes. Either I'm afraid of you or I didn't have the need. The reason was that we were able to do an awful lot through informal resolution, to show what we had and persuade the ministries to correct, or give redress, on some occasions, and there was no need—the one case I came before you to argue was to do with Cancer Care Ontario and the operation of that program in connection with the northern health travel grant. My view was that it was operating adversely, to the advantage of the south but not the north. I lost; the government used its majority, and that's fine, but about a month or so later the northern health travel was enhanced, and that was fine. Not having to resort to the committee, I hope, has been a sign of good but independent relations with the various parties.

My staff held what was supposed to be a Christmas-seasonal party the other day. I walked in with my silly Christmas hat on to find that it was set up very formally and that it was, in fact, a staff tribute. To my surprise, they had my wife and oldest grandson there. My wife spoke to the staff at their request and said to them that they had enriched me and that they had given me the possibilities to achieve things that I had never dreamed I would be able to do. I think that's true.

You may know—it was mentioned by Ms Jeffrey this morning, and I was very grateful for her comments; I spoke about that before you came in, Ms Jeffrey—that I was elected as president of the International Ombudsman Institute, which has 170 members in some 76 countries around the world. I had the opportunity to preside over their world conference in Quebec City this fall. We had representatives from 70-odd countries, 340 of them. The conference was opened by the Governor General. It was a stunning event. I know ombudsmen now throughout the world, and I want you to know that your Ontario Ombudsman's office is considered, and has been for some time, a leader in the ombudsman movement internationally. It's well known, and it has had the opportunity to prove its mettle. It's set standards that are followed by many offices.

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Internationally, countries in transition to democracy, such as former Soviet republics, countries in Asia and so on, are frequently turning to the classical ombudsman construct as a means of supporting democracy. We

hardly have to go that far. We have a well-entrenched democracy, with independent and competent courts, excellent Legislatures, human rights commissions and Ombudsmen. We have a number of institutions which support the concept of democracy, but a lot of countries don't, and they go to the ombudsman as a means of assisting. I've seen evidence of how that's working. We've been called upon, in the Ontario office, to contribute to that on a number of occasions. I take pride in it, but it couldn't have happened without our staff.

So I think you have some idea of the kind of work we did during my term. I have reported annually through the Speaker.

This was mentioned this morning: I decided that—let me put it another way. I was asked recently why Prince Edward Island is the only province not to have an ombudsman. We have no national ombudsman, but that's another story. But why not Prince Edward Island? I said, well, it's only got a very few hundred thousand people. Most of them know each other, and they can pick up the phone and say, "I've got a problem, George. What are you going to do about it?" That's not true in a 12-million-person province, nor in any of the others.

We have a lot of people, however, people like us; if we have troubles, we often have connections that we can use very quickly to get corrections, to get redress without going through formal processes, but an awful lot of people do not, particularly vulnerable populations. In that respect, I think we play a very important role, so issues of disability, of children, of prisoners—yes, because once incarcerated, they too are vulnerable—have been the focus of much of my work, not to the exclusion of people well-placed who need redress. We've done it, and done it quite well, and I've reported on it.

I am truly grateful and privileged to have been chosen by the Legislature five years ago to have this position. I consider it to have been a pinnacle of a pretty diverse career. I left the bench 19 years ago. I could have stayed for three more years and had a full judge's pension two years ago. I want to tell you, that's a good dollar today, and more than I will have in total. It was, nonetheless, worth it all because—and I in no way denigrate the bench. But what I have had the opportunity to do is work on the fringes of government to deal with public policy issues over a host of jobs, and I love it. I think it's great. I think it's wonderful.

So I am here to tell you—although I am quite prepared to take any criticisms you may want to offer me and any suggestions for transition to the new Ombudsman—that I am privileged and honoured. Thank you for having allowed me this way of concluding my career.

I would be delighted to receive any questions. I wanted to come before you because you're the committee that got me here, and even if I only came once, I wanted to talk to you.

The Chair: Thank you very much. I have a list of people who've asked to address Mr Lewis. Mrs Jeffrey had a comment.

Mrs Linda Jeffrey (Brampton Centre): Mr Lewis, it is, I think, our privilege to talk to you today. I just want to say, I'm pleased that you're here. I have a lot of respect for the job that you do and the character that you bring to the job, so thank you very much. As the former Chair, I enjoyed listening to your observations, and I think those constructive criticisms that you give government to make them do a better job—you help us do a better job, so thank you very much.

I had a question. The last time you come and spoke to us you talked about how you squeezed your budget to find some advertising dollars and how you ran an initiative to provide accessibility to people in Ontario. How do you think that went? Was it a success? Could you have done it differently? Was it something that you're pleased with? Should it be an ongoing program?

Mr Lewis: Thank you for asking me that. Yes, it was a success, and the emphasis is on "was." Budget is again an issue. As you're aware, government is in straitened circumstances. When you are flatlined, as we were in our last budget—and we're about to do our budget presentation—you have to make sacrifices to meet that.

We have a union. We entered into our collective agreement in January of this year. We thought we were following the guidelines of the Legislative Assembly. Then the figures came out from the government as to the size of the deficit and so on. The long and short of it: We were flatlined. We have salaries to pay and they're higher, and our operating costs had not gone up. I was determined not to lay anybody off during my term. I had a year to do it and I succeeded.

We are now faced with the second year of the collective agreement and going for the budget again. What I can tell you is that the community education program—and it wasn't just advertising; it was a very active program of my staff out in the community doing some super things, even programs on how to complain effectively. We were doing this to the vulnerable communities. I wouldn't call the Rotary Club this, but generally my manager of outreach placed me in front of groups that represented vulnerable clients so we could, through them, have access to their clients. For instance, one wonderful opportunity I had was to the Ontario Association of Social Workers this year. It was an amazing opportunity to inform them that we could perhaps be available to their people. I'm not the advocate—they are—but I have a service that has to be known.

I can tell you that our complaint base over that period increased by a little over 1,000. What was interesting to me was not the number so much as the fact that the complaints we got, the increase, were a higher proportion of jurisdictional complaints. In other words, people knew what we could and couldn't do before they came to us, and that's more than they did before.

I must tell you that I've had to cut that program back, and it may get further cuts. You have a core service and you have to try to protect the core service. But I believe that to be effective, an Ombudsman office has to be known. By the way, I see the Ombudsman office as very

much complementary to the work that you do—not the work in the House, but your constituency work. We're able to do it in addition to what you can do because we have powers: of entry, of search—lots of powers that I've almost never used. I have a power to summons people and question them under oath. I haven't done it. I haven't had to do it, but I was prepared to do it. That's something that I think we are, in effect, partnered in. I see the legislators and the Ombudsman as having a real role in assisting constituents with their problems. I guess that's why they created the office here 30 years ago. It was done by your predecessors.

I'm sorry; that's a long answer.

Mr Norm Miller (Parry Sound-Muskoka): I'd first of all like to thank you for your years of service as Ombudsman. Having been involved in the interviewing process, I can say that the job you've done as Ombudsman is highly respected. I gather that you improved things dramatically in your time there. Thank you for that.

1630

Just a couple of questions: In terms of the budget, to maintain the level of service you're at currently, what sort of budget increase, if there were no other restrictions, do you think would be reasonable?

Mr Lewis: I hope I'm not going to stamp on the privileges of the Board of Internal Economy. I'm at \$9,024,000 right now, and I have been for two years. We would probably need another 4%, and it's not operating costs. We have maintained our operating costs—I hope; we are renegotiating our lease, but we think so.

Mr Miller: That's mainly to address the salaries and the collective agreement.

Mr Lewis: It's the salaries, yes. I can tell you exactly what it is. It's the collective bargaining obligation and a 2% raise for excluded staff, if we're able to do that. That's what we would propose to do. The bargaining unit would get more under the collective agreement. I'm just sorry that we did our bargaining before Mr Sorbara spoke. I would have preferred to do it after.

Mr Miller: Also, in terms of the transition to the new Ombudsman, Mr Marin, you've retired—

Mr Lewis: No, not yet. I have five weeks left. I can do a lot of damage. I leave on January 29.

Mr Miller: January 29, OK, and then he starts April 1.

Mr Lewis: That's right. There'll be a request for the appointment of a temporary Ombudsman. That's in the act. I believe once the House rises, that can be done by the government for up to six months. That's what will happen.

It's not necessary, but it might well be an internal person. If asked, I will recommend somebody, or one or two people.

Mr Miller: I understand you've already introduced the new Ombudsman to some of the staff.

Mr Lewis: Yes, it was great. I have to tell you about that. It was a wonderful moment. I was late getting here. I misunderstood the time, and I missed the event. I'm

sorry about that; I wanted to be there in support. I tracked him down in the office of human resources in the Whitney Block, and I said, "What's your schedule?" This was at a quarter to 3, and I'd already called for a staff meeting at 3 o'clock in the boardroom at our office. I said, "If you can come with me for 20 minutes, would you like to meet your new staff?" "Sure."

So up we went, and it was wonderful. I must tell you, their reception of him was quite positive. They were thrilled. I think somehow the word had actually got there before I did, which was pretty good; they were excited. I asked him to speak, of course, and he did. Then I said to him, "By the way, we have a lot of francophone and bilingual staff. Would you mind proving to them that you can do it?" And of course he can, and he did. That pleased them.

I know this happens: Every time an Ombudsman's term ends, they've been very worried about who will be there. I think that the worry was removed yesterday.

Mr Miller: That's great. Once again, thank you for your years of service. From all accounts, you've done an excellent job. We certainly appreciate it.

Mr Lewis: Thank you, Mr Miller. I appreciate it.

Mrs Cansfield: I'd like to echo the same comments, Clare. I think you've done an absolutely superb job. When I read the report, one of the things that was abundantly clear is that there were places where we could have some significant savings in terms of how we dealt with a lot of folks, especially in the family resources area.

My question to you is, if in fact the recommendations that you made were adhered to, let's say even a portion of them, that should result in fewer requests of your office, because there were so many of the same kind. Doing that should help you in terms of your budget requirements, because you won't need as many, one might suspect.

It's the follow-through process that I'm really interested in. You identify, as an Ombudsman, or your office does, those areas of concern. You give them to the government; the government then implements or does not implement. What happens? Do you go back and do another analysis of that or does it become a part of the public accounts kind of stuff?

Mr Lewis: To your first comment, in a perfect world it should reduce my complaints, but it just doesn't work that way. There are two kinds of recommendations that I tend to make. There are the individual recommendations arising out of a specific complaint, and sometimes when a correction is made there, it does have a broader impact because the Family Responsibility Office says, "Oh, yes, we'd better straighten that one out," and they do.

I also do a lot of systemic investigations, and that's when there is an apparent system-wide problem. When those are solved, sometimes they save money, but sometimes they cost money because people haven't been getting the service they need and should have been getting.

But I can say, on the whole—do I go back? Yes. Some deputy minister is getting awfully tired of hearing from me. The best example of that is the Family Responsibility Office. Ms Pupatello now is in charge, and that's probably a good thing, because she sure had a lot to say about it in opposition and criticized me for not getting all the answers, and that was fine. Now it's her job.

Mr Mario Sergio (York West): She's still after you; right?

Mr Lewis: Oh, yes.

I thought I had won a big one back in my second report. The Deputy Attorney General of the day, because that's where FRO used to be, agreed with me to go forward to Management Board seeking a request for the monies to find a computer base. That's one of the big problems at FRO. They don't have a system that works well. I thought, "Terrific." A reporter said to me, "That's great, Lewis. But it's going to take at least two years; right?" I thought, "Well, it won't happen tomorrow."

I've got to tell you, we're still waiting. I think we're very close now. That's been one of my disappointments, but it's taken a long time. A lot of people, often mothers with children, don't get the money they need. If they don't have family supports, then it comes on to social assistance. But there's a lot of grief when that happens. Nobody is out to hurt them, but it's a reality that if they don't—but anyway, I've been on FRO time and time again. We actually get along very well because I know what the problems are, and it's not the intent; it's the functions. They're getting better. I think in the near future we should have a process that's pretty good.

Mrs Cansfield: My other question is, like most—not like most; I shouldn't say that. There can be a tendency sometimes, when an organization exists, to grow exponentially, because it's a self-fulfilling prophecy.

Mr Lewis: Empire building.

Mrs Cansfield: Empire building. I didn't want to use those words, because I don't think that's ever been your intent. Having said that, I think that also what you can leave is probably some good advice around what is an optimum size and to what extent should the Ombudsman's capacity to exist exist. It's easy to ask for money when there isn't any; even if there is some, you have to justify it. But what's big enough? What's a good size to work with that you can get good service out of?

1640

Mr Lewis: I thought I was at that optimum, and I've said so. But I've also said that back in the mid-1990s—I told the Board of Internal Economy this when I went back pleading after we'd been flatlined; unsuccessfully, I might say. In the mid-1990s, the office at that time had about 134 staff. They had about nine people in their legal department; it may have included students. I know that I said to the board, "I don't know what they were doing. They must have been writing memos to each other."

I'm a lawyer. I've been a lawyer for 40 years. I've got two and one half lawyers and I work them hard and I get terrific results. I don't need a legal department of nine. So my staff size now is, I think, 85. I think I have a

complement of 87, but it hasn't grown in my term, that I can recall. I've shifted things around and I have no doubt that that'll happen again. It's just inevitable. There are some areas where I think some shifts probably should be made.

I am familiar with the empire-building instinct and so on. I haven't tried to do it here. I will say to you that the Ontario Ombudsman's office is certainly the best-funded in Canada. We are the largest province. We're one of the better-funded ones in the world. The European Ombudsman is pretty big stuff, but that's for the European Union. And the South African one is pretty big. But we are generally well-funded.

The issue is one of accountability and value. We were getting our work done well. Would I like to do it better? Sure, but that sometimes requires different people and you can't just turn an organization around. A lot of people—not a lot of people, but a few people left when I came in who probably didn't like the cut of my jib. But I think you've got an office today—unless government decides to do something like merge it with something else or give it other responsibilities—for instance, I'll give you an example. The Information and Privacy Commissioner has just been given jurisdiction over hospitals, I think. What do you now call the Provincial Auditor?

Mr Sergio: Auditor General.

Mr Lewis: Auditor General, yes. He picked up more jurisdiction, and I would hope he and Ann Cavoukian will get some budget to support the extra work. There's a modernization process going on now in government. It's always going on; I've seen them before, and they're necessary. You have to retool and whatever. If it were determined that it would be more efficient or beneficial to add to the Ombudsman's office, there are things that can be added.

I know jurisdictions where you have any number of different things. You have municipalities. I don't have municipalities. You have the health system, the hospitals. I don't have them, and my wife would be some annoyed if I did, being the vice-president of a hospital.

The Chair: Is there another point that you wanted to add? OK. Mr McMeekin, you had a question.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Sorry, were you finished?

Mr Lewis: Yes, I am.

Mr McMeekin: I just have a couple of comments I want to make, which I think have been made in some way already.

I just wanted to join the others in thanking you for your years of public service. Growing up, my mum used to say that public service isn't an option; it's an obligation. With the little I know about you, I think before serving in this esteemed office and through it, you've certainly come with that sort of approach. We value that here.

I know from being an observer of this place that when you were appointed five years and a bit ago, not everything was well with the Ombudsman's office. I think the most important relationship we as elected people have on

a good day with the people of Ontario is the trust relationship. Sometimes, even in a democracy as wonderful as ours, it breaks down. We need to have mechanisms in place and people in place in charge of those mechanisms who can be the buffer, can do the case-to-cause advocacy which you were talking about and can, in many instances, particularly with people on the fringes, people who feel like they're at the end of their rope, that there's nowhere else to turn—I know that on a couple of occasions we've referred constituents to your office because we felt frustrated that there was nowhere else to turn. So it's something that I know is a work of love on your part. It would have to be, just to take all the—I'm looking for the right word here—

Interjection: Flak.

Mr McMeekin: Flak—I was going to say "abuse," but flak that comes with it.

I'm buoyed by your enthusiasm for the new Ombudsman. I share your view that the new Ombudsman will stand tall. I think he'll stand tall largely because he'll be standing on your shoulders. We want to say thanks to you and well done. It's almost Biblical, "Well done, our good and faithful servant," but I don't want it to be too corny.

You've had some tough ones—Cancer Care Ontario—and then the issue I have a particular interest in, and that's autism. It's a huge issue. It beguiles me that not just the previous government but even our government seems to be having trouble getting a handle on it. We seem to know that the kids, who, for whatever reason or a combination of reasons, don't get the help they need, are going to have some real difficulties later in life. We need to find a way to deal with it outside of the courts, I want to say with respect.

I think you've helped us struggle with that, and I appreciate that. I read your report. I appreciate the observations you make and the advice you give.

Just on my own behalf, and on behalf of a government that I'm privileged to be a member of, I want to thank you for your years of service. They've been good years. You've served us well. You have the office in good shape. We're going to build on that foundation that you've left us. Together, this place, working with your successors and the wonderful staff you have, we are going to continue to make a difference with this problem. So thank you, sir, from all of us.

Mr Lewis: Thank you. I appreciate it.

The Chair: Are there any further comments?

Mr Lewis, earlier you said that one of the satisfying things you found about the office—to use your own words—was being able to do "things that I never dreamed I would be able to do." I think that sums up all of our feelings in every party here, to be able to come here and play a small role and to realize that the Ontario we pass along was made possible by being able to do things that none of us ever dreamed about being able to do.

You mentioned Ontario's leadership in the role of the Ombudsman. I'd like to point out, on behalf of the

committee, that it's due in no small part to the contribution of Clare Lewis. As Ontarians, we're so used to the checks and balances that facilitate the fairness we find in our Ontario society that we often take for granted these very checks and balances and the people who make them possible. We sometimes forget that the skill and tact, the diplomacy, the patience, the experience and indeed the maturity that's necessary to be an effective Ombudsman are things we have to find in a single individual. For the past number of years, we've had that individual in you, and you've demonstrated all of those qualities marvellously.

You mentioned earlier that you could have taken a full judge's pension. I'd just like to point out that in this room any pension sounds like a good one.

Mr Lewis: Yes, I'm sure.

The Chair: On behalf of all of us who are privileged to serve in the Ontario Legislature, be it as elected members or as staff, I want to thank you very much for the service you've rendered to your province and especially to the people you've served so ably. I wish to you and your family a merry Christmas, a happy New Year and a warm and rewarding retirement.

Mr Lewis: Thank you.

Applause.

Mrs Cansfield: You're not going to retire.

Mr Lewis: My wife thinks I'm just going to change jobs, but we'll see.

I just want you to know that I have the greatest regard for the work you do. I only went to law school because I intended to run for politics. I got captured by the law. I keep getting captured by other things. But I've always had a high regard and I continue to. So thank you. Your very words matter to me.

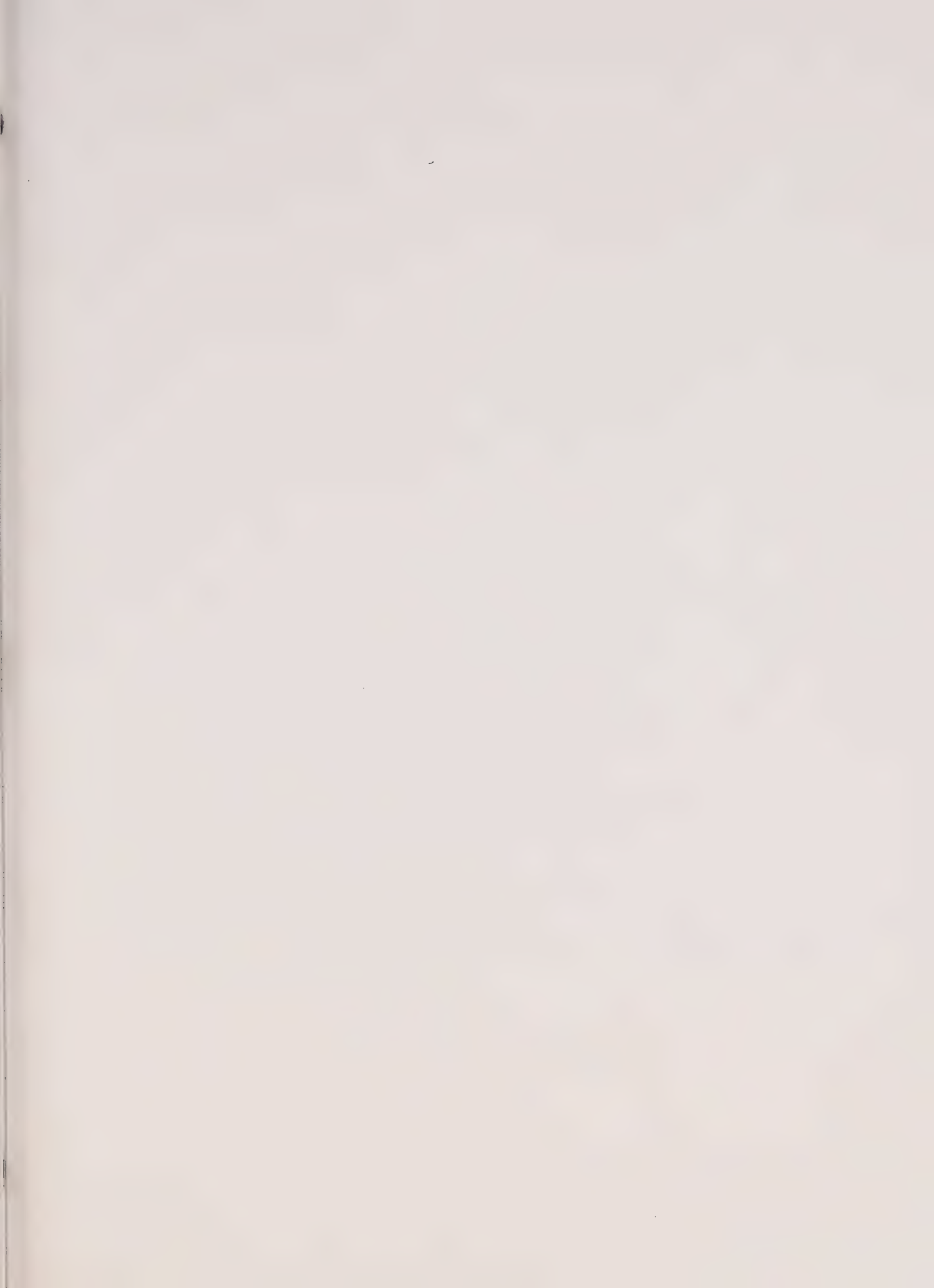
The Chair: Thank you very much.

We have one last item of business on the agenda, and that is the meeting of the subcommittee to deal with our procedures on Bill 132. As our member from the NDP is not here, I have an undertaking by the clerk to contact members with regard to a subcommittee via conference call.

Mrs Cansfield: I move adjournment.

The Chair: Adjournment having been moved, all in favour? Opposed? Carried. This meeting is adjourned.

The committee adjourned at 1651.



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Standing committee on the Legislative Assembly

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2005

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Monday 24 January 2005

Lundi 24 janvier 2005

The committee met at 0905 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Bob Delaney): Good morning, everyone. Anyone who hasn't been wished a happy new year, have a happy and prosperous new year.

I call the meeting of the standing committee on the Legislative Assembly to order. We are here to begin public hearings on Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act.

Our first order of business is the subcommittee report. May I ask that the subcommittee report be read into the record?

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Mr. Chair, your subcommittee on committee business met on Wednesday, December 22, 2004, and Friday, January 14, 2005, to consider the method of proceeding on Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings from 10 a.m. to 5 p.m. in Toronto on Monday, January 24, 2005; Barrie on Thursday, January 27, 2005; Brantford on Wednesday, February 2, 2005; Toronto on Thursday, February 3, 2005;

(2) That ministry/caucus research staff be allowed to travel with the committee if space permits;

(3) That teleconferencing/video-conferencing technology be used if available;

(4) That the clerk of the committee, with the authority of the Chair, post information regarding the hearings in the Barrie Examiner, the Barrie Advance and the Brantford Expositor for one day each, at least one week prior to the committee travelling to the destination;

(5) That an advertisement also be posted on the Ontario parliamentary channel and on the Internet;

(6) That the deadline for receipt of requests to appear be Wednesday, January 19, 2005, at noon;

(7) That staff of the Ministry of the Attorney General be scheduled to present a technical briefing for 45 minutes at the open session committee meeting at 9 a.m. on Monday, January 24, 2005;

(8) That the minister be invited to appear before the committee as the first witness on Thursday, February 3, 2005, at 10 a.m. for 20 minutes to make a presentation and answer questions from the three parties, followed by a 10-minute statement by each opposition critic.

(9) That the length of presentations for other witnesses be 15 minutes for groups and 10 minutes for individuals.

(10) That the clerk of the committee distribute a list of potential witnesses received at the deadline for requests to each of the three parties by Wednesday, January 19, 2005, at 5 p.m.

(11) That if required, each of the three parties supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by Thursday, January 20, 2005, at noon. These witnesses must be selected from the original list distributed by the committee clerk.

(12) That if all groups can be scheduled in a given location, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required for that location.

(13) That the research officer provide an interim summary of testimonies by Wednesday, February 2, 2005, and a final summary of testimonies by Tuesday, February 8, 2005.

(14) That the deadline for written submissions be Thursday, February 3, 2005, at 5 p.m.

(15) That the deadline for submitting amendments be Monday, February 7, 2005, at 5 p.m.

(16) That clause-by-clause consideration of the bill be in Toronto on Thursday, February 10, 2005.

(17) That each party be allowed 15 minutes for opening statements at the beginning of clause-by-clause consideration of the bill.

(18) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

Mr. Chairman, this is the report of your subcommittee and I'm pleased to move its adoption.

The Chair: Questions or comments? OK. I'll put the question.

Those in favour of adopting the report of the subcommittee? Opposed? Carried.

0910

PUBLIC SAFETY RELATED TO DOGS
STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI CONCERNE LA SÉCURITÉ
PUBLIQUE RELATIVE AUX CHIENS

Consideration of Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act / Projet de loi 132, Loi modifiant la Loi sur la responsabilité des propriétaires de chiens pour accroître la sécurité publique relativement aux chiens, y compris les pit-bulls, et apportant des modifications connexes à la Loi sur les animaux destinés à la recherche.

MINISTRY OF THE ATTORNEY GENERAL

The Chair: Our next order of business is a presentation on behalf of the Ministry of the Attorney General. May I ask Mr. Twohig and Mr. Lewis to please come forward.

Mr. John Twohig: Good morning, Mr. Chair and members of the committee. My name is John Twohig, with the Ministry of the Attorney General. Appearing with me is Mr. Abi Lewis. You should have before you a set of slides that we've prepared for the committee and a clause-by-clause breakdown of the provisions of the bill. With your permission, Mr. Chair, Mr. Lewis will take you through the slides. We're available for questions at any time.

The Chair: Thank you. The floor is yours.

Mr. Abi Lewis: Bill 132 seeks to amend the Dog Owners' Liability Act as well as the Animals for Research Act. I will talk briefly about the legislative history of the Dog Owners' Liability Act.

The Dog Owners' Liability Act was enacted in 1980. DOLA allows for the prosecution of an owner whose dog has bitten or attacked a person. The court can order the owner to more effectively control the dog or have the dog destroyed. The maximum penalty under the legislation is \$5,000. Victims of dog attacks can file civil suits for damages. Liability of the owner does not depend on knowledge of the propensity of the dog or the owner's fault or negligence.

Although the legislation was enacted more than 20 years ago, the legislation has only been amended once, and that was in 2000. In 2000, eight recommendations from the jury at Courtney Trempe's inquest were dealt with by amending the legislation to do the following:

- (1) To allow the court to order a dog be leashed or muzzled pending a determination of whether the dog is dangerous or pending any appeal of such determination;
- (2) To provide for an automatic restraint order when a dog is ordered destroyed;
- (3) To clarify that the maximum fine of \$5,000 applies to all offences under the legislation; and

Last, to authorize the courts to prohibit a dog owner found liable under the legislation from owning another dog for a specified period.

Bill 132, the bill that this committee is considering, is the second major attempt to amend the legislation. Bill 132, the Public Safety Related to Dogs Statute Law Amendment Act, 2005, seeks to do the following: ban pit bulls in the province; impose more controls on dangerous dogs; and hold irresponsible owners more accountable. In addition, Bill 132 amends the Animals for Research Act to provide pounds with a scheme to handle pit bulls that come into their care or are transferred to them. The overarching goal of the proposed amendments is to ensure public safety by helping to reduce the threat that pit bulls and other dangerous dogs pose to the safety of Ontarians in their communities.

Under the legislation, "pit bull" is a defined term. The proposed definition in the legislation is essentially the same as the definition in Winnipeg's bylaw or that of Windsor and differs from Kitchener's bylaw in one respect, which is by not exempting purebred Staffordshire terriers. The proposed law prohibits the "owning, breeding, transferring, abandoning or importing" of pit bulls. It also prohibits training pit bulls to fight.

There are two main exceptions to the general prohibition. First, owners of pit bulls in existence at the time the proposed law comes into force or of pit bulls born within 90 days of the law coming into force will be permitted to keep them as long as they comply with certain requirements. This category of pit bulls will be known as "restricted pit bulls." Owners will also be able to keep pit bulls, although certain rules will apply to them on how to deal with pit bulls.

I'll now talk about the "restricted pit bulls" category. Bill 132 will allow regulations to be made requiring owners of restricted pit bulls to have them muzzled and on leashes while in public and also to have them sterilized. Municipalities, in accordance with their authority under the Municipal Act to make bylaws on animal control, can impose additional controls. The proposed law permits restricted pit bulls to be transferred by gift or bequest. There are limits on the number of restricted pit bulls that Ontario residents can acquire after the proposed ban comes into force. For example, an individual who does not have a pit bull prior to the ban can only acquire one restricted pit bull once the ban comes into force.

One of the new features of the proposed legislation has to do with the search and seizure provisions. The search and seizure provisions apply to all dogs that are deemed a threat to public safety, including pit bulls. Peace officers, who are defined in Bill 132, will be authorized to obtain a warrant to enter a building to search for and seize a dog in the interest of public safety. The proposed law defines some situations that could give rise to the interest of public safety being at stake. Where exigent circumstances exist, peace officers can enter into a building to search for and seize a dog without a warrant. "Exigent circumstances" are defined in Bill 132 to include prevention of "imminent bodily harm or death

to any person or domestic animal." The proposed law will authorize peace officers to seize a dog in a public place in certain circumstances, including when a dog has bitten or attacked a person or a domestic animal.

0920

There are three types of proceedings that are contemplated under Bill 132. They are actually the same proceedings that are available under the current legislation. The three types of proceedings are the following: A defendant can commence a civil action for damages. Bill 132 does not propose any changes to this proceeding. The second proceeding has to do with a proceeding under part IX of the Provincial Offences Act for an order. The third type is a proceeding under part III of the POA for the conviction of an offence.

Alleged contraventions of the legislation or regulations can be prosecuted either through part III or part IX of the POA, but results differ. They differ in the sense that under part IX, one is seeking a compliance order, whereas under part III it's a prosecution for the offence provisions of the legislation.

I'll now talk briefly about part IX POA proceedings.

Provincial or municipal prosecutors or an individual can initiate an application at the Ontario Court of Justice for an order.

Bill 132 expands the grounds available to seek a compliance order by adding that a proceeding can be commenced against an owner where his or her dog has behaved in a manner that poses a menace to the safety of persons or domestic animals. Currently, a proceeding can only be commenced where the dog has actually bitten or attacked.

Other grounds for seeking an order include failure by a dog owner to exercise reasonable precautions to prevent his or her dog from biting, attacking or posing a menace to the safety of persons and animals, and of course there is the usual catch-all provision which deals with alleged contraventions of the provisions of the legislation.

As in any regulatory proceeding, a defendant will usually have a defence of due diligence available to him or her.

The current DOLA also lists some of the mitigating factors that a court can take into account in issuing orders.

Compliance orders can be sought from the court to direct a dog owner to take certain steps regarding his or her dog. In other words, compliance orders go to the heart of issues pertaining to the responsibility of a dog owner.

Under the proposed legislation, there are mandatory or discretionary orders that can be issued by the court in respect of proceedings seeking compliance orders. Bill 132 requires the court to issue mandatory orders in certain situations such as the following:

(1) In ordering an owner to take measures for more effective control of his or her dog, the court must also order that the dog be sterilized.

(2) If the dog in a court proceeding is found to be a pit bull that has bitten or attacked or posed a menace to safety, the court must order that the pit bull be destroyed.

(3) If the court finds that a pit bull owner has contravened a provision of the legislation or regulations, the court must also order the pit bull to be destroyed. Of course, the court can also issue discretionary orders. For example, if the court is satisfied that a dog has bitten or attacked a person or domestic animal and is satisfied that an order is necessary for the protection of the public, the court may order a dog destroyed or that the owner take specified measures for more effective control of the dog.

I'll now talk about part III POA offence proceedings.

Under Bill 132, an offence proceeding can be initiated against a dog owner or any individual who contravenes a provision of the act or regulations made under it. Part III POA proceedings are prosecuted by the province, although fine proceeds go to municipalities. The proposed law will double maximum fines to \$10,000 and allow for a jail sentence of up to six months for individuals upon conviction. In addition, Bill 132 proposes a maximum fine of \$60,000 for corporations.

Another new feature of Bill 132 is that it will allow restitution orders to be issued against individuals convicted of offences under the legislation.

Bill 132 also deals with the issue of proof. A dog owner has the onus of proving that his or her dog is not a pit bull if identification of the dog becomes an issue in a court proceeding.

I will now turn to the amendments to the Animals for Research Act.

The main purpose of the Animals for Research Act is to ensure the humane handling, care and housing of animals used for research and product testing. Authority for the operation and inspection of pounds that are empowered by municipal bylaws to impound cats or dogs is also found in the legislation. The proposed amendments to the Animals for Research Act provide a scheme for pounds to handle pit bulls after a ban comes into force. The proposed amendments will establish a process for dog owners to prove to pound operators that seized dogs are not pit bulls. In addition, the proposed amendments will establish a process for dog owners to prove to pound operators that seized pit bulls are restricted pit bulls that are in compliance with legislation.

The goal of the proposed changes to the Animals for Research Act is to ensure that the pit bull ban is not in conflict with the processes already present under the Animals for Research Act. In a nutshell, this is what Bill 132 is all about.

Mr. Chair, if you will permit me, I will now speak briefly about the public consultations that took place in the course of developing Bill 132.

On August 28, 2004, a 25-year-old man was mauled by two pit bulls that he was walking for a friend. The police, who shot the dogs, rescued the man. The victim was admitted to the hospital with serious injuries. Following the incident, the Attorney General announced that the government would review the issue of a ban on

pit bulls and that it welcomed comments from the public and organizations. The minister received several letters and more than 6,000 e-mails on the issue, with the majority in favour of a province-wide ban.

On September 9, 2004, the Attorney General held a round-table discussion involving representatives of the police, municipalities, bylaw enforcement officers, humane societies, the National Companion Animal Coalition, the Canadian Kennel Club, a dog training expert and some members of the public to obtain their views. The coalition's membership includes the Canadian Federation of Humane Societies, the Canadian Veterinary Medical Association, the Pet Industry Joint Advisory Council, and Agriculture and Agri-Food Canada.

Prior to the introduction of Bill 132, consultations on a pit bull ban took place in different contexts and were wide-ranging. Input was received through letters, e-mails, meetings, telephone discussions, media reports, commentaries and a review of literature on pit bulls.

The Ministry of the Attorney General also consulted the following ministries: the Ministry of Agriculture and Food, the Ministry of Community Safety and Correctional Services, and the Ministry of Municipal Affairs and Housing. All of these ministries do have a little bit of a sphere of jurisdiction pertaining to animal regulation.

Externally, consultations cut across a broad spectrum of stakeholders, ranging from animal welfare organizations, law enforcement agencies, municipalities, veterinarians, pet owners, victims and those involved in dog training.

Attached to the set of slides that have been distributed to the committee members, we do have a list of some of the organizations that were consulted. To save time, I won't read that into the record. Thank you very much, Mr. Chair and members of the committee.

The Chair: We have approximately 27 minutes for questions. We'll begin our questions and comments with the Conservative caucus.

Mr. Peter Kormos (Niagara Centre): On a point of order, Mr. Chair: How do you propose to distribute that 27 minutes?

The Chair: Nine minutes each, rotating between the caucuses. Mr. Miller.

Mr. Kormos: Thank you kindly.

0930

Mr. Norm Miller (Parry Sound-Muskoka): Thank you for coming before the committee. I do have a couple of questions. Just for clarification, the current Dog Owners' Liability Act imposes a maximum fine of \$5,000?

Mr. Lewis: Correct.

Mr. Miller: Can you give me an idea of how often that has been used in the past? You said it's been in place for 20 years, and then it was modified with eight recommendations in 2000. Have there been people who have been charged and given that fine? What sort of history is there on convictions under this law?

Mr. Lewis: I do not have the statistics with me, but I do know that from time to time, prosecutions have taken

place. Depending on the context in which a proceeding is brought before the court, the fines have actually ranged all over the map, from as little as \$100 or \$200, depending on what the infraction is, to a maximum fine of \$5,000. We can endeavour to find out from our statistics about the fine ranges for you and for the committee.

Mr. Miller: Thank you. In your presentation—it's on page 8 of your slides—you said under "Part IX POA Proceedings" that "Bill 132 expands the grounds available to seek a compliance order by adding that a proceeding can be commenced against an owner where his or her dog has behaved in a manner that poses a menace to safety of persons or domestic animals." Who would determine if someone's dog had posed a menace to safety of persons or domestic animals? How would you determine that?

Mr. Lewis: The determination will take place within a judicial proceeding; in other words, the court will be the ultimate arbiter on whether or not a dog has posed a menace to public safety.

Mr. Miller: OK. Going on to page 9, the current legislation "lists some of the mitigating factors that the court can take into account in issuing orders. Compliance orders can be sought from the court to direct a dog owner to take certain steps regarding his or her dog." You talked about how it lists some of the mitigating factors that the court can take into account in issuing orders. What are the mitigating factors?

Mr. Twohig: They can be found at subsection 4(6), under the heading "Considerations":

"In exercising its powers to make an order under subsection (3), the court may take into consideration the following circumstances:

"(1) The dog's past and present temperament and behaviour.

"(2) The seriousness of the injuries caused by the biting or attack.

"(3) Unusual contributing circumstances tending to justify the dog's action.

"(4) The improbability that a similar attack will be repeated.

"(5) The dog's physical potential for inflicting harm.

"(6) Precautions taken by the owner to preclude similar attacks in the future.

"(7) Any other circumstances that the court considers to be relevant."

Mr. Miller: Thank you. The onus of proof, on page 11: "According to Bill 132, a dog owner has the onus of proving that his or her dog is not a pit bull if identification of the dog becomes an issue in a court proceeding." How will a dog owner who has a dog that under this new bill looks something like a pit bull prove that their dog is not a pit bull?

Mr. Lewis: Currently, pet owners do know whether a dog is a pit bull or not. What the proposed legislation contemplates is that where identification becomes an issue in a legal proceeding, the onus shifts to the dog owner to dispute the initial decision made by the bylaw enforcement officer or peace officer about the character-

istics of the dog, like any kind of proceeding where identification is an issue.

Mr. Miller: The onus is on the owner, but a pit bull is not a breed of dog. I know you've got a definition here. How does someone prove the dog is not a pit bull if it just happens to look a little bit like a pit bull?

Mr. Lewis: A pit bull is not a breed as such, but over the years we have looked at the literature pertaining to pit bulls and there has been a sort of unanimity among dog registries pertaining to the types of dogs that will qualify as pit bulls.

Mr. Miller: So there's no science-based test. You can't take some DNA from the dog and prove that it's not a pit bull if you're the owner of a dog that happens to look like a pit bull.

Mr. Lewis: According to the veterinarians, to my knowledge, there is no DNA test as of now.

Mrs. Julia Munro (York North): I just have a question that deals with the part of the presentation where you talked about the consultation and the concern that was raised with regard to the need to be breed-specific. While I agree with my colleague on the difficulties of identification, for the purposes of my question, I'll leave that aside.

Clearly, in the creation of this proposed legislation, there is the notion that a particular type of dog has been characterized as a potential danger. We've seen the fact that in this part of the bill, its posing a menace is part of the definition. So I wondered, when you include breeds such as a Staffordshire bull terrier or an American Staffordshire terrier, what kind of data would you have used to include them in the same kind of category as however you define a pit bull?

Mr. Twohig: Could I just first of all clarify that the issue of posing a menace to society applies to all dogs, not just the dogs that are proposed to be banned here. So it's an across-the-board test for all dogs. In terms of why this particular set of dogs was banned as opposed to others, I guess one reaction I might have is that you might pose that question to the Attorney General.

In terms of data or experience, you're aware of the city of Winnipeg's experience since 1991 and the city of Kitchener's since 1997. So there are experiences in other jurisdictions where these breeds have been banned or variations of these breeds have been banned.

Mrs. Munro: I guess my question is that I would have comfort if we were looking at specific data regarding these particular breeds in a way that would support the notion that they would fall into the same category as a pit bull. You raise these other jurisdictions, but do they have information that says Staffordshire bull terriers and American Staffordshire bull terriers belong in this category? Have they got information that says X number of hospital visits by people—some kind of trigger that would help us understand the inclusion of these two particular breeds?

Mr. Lewis: Again, I would like to answer that question by saying that the regulatory landscape actually goes through the spectrum. In other words, you have the city

of Winnipeg and the city of Windsor that have almost exactly the kind of definition that we have. And we have the UK legislation, where they simply have a protean pit bull terrier, and then more or less the decision would have to be determined based on their experience with various types of dogs on what constitutes a pit bull.

In terms of hard data—

The Chair: Thank you. Time has expired. Mr. Kormos.

0940

Mr. David Zimmer (Willowdale): Mr. Chair, on a point of order: In the materials that—

Mr. Kormos: Is this going to be a real point of order? I'm not sure.

Mr. Zimmer: Yes. There's just a missing page in the materials on the consultation process. It runs from—page 16 is missing. I have a copy here that was put in as a part of the record.

The Chair: OK, we will have the clerk's office undertake to correct that error. Mr. Kormos.

Mr. Kormos: Thank you, gentlemen, for coming this morning.

Chair, if you could let me know when I've got a minute left, give or take, I'd appreciate it.

Let's talk a little bit about the history. You talk about a particular incident here in Ontario, an attack by a pit bull on a person, prompting the Attorney General to—what?—call upon policy people to develop options?

Mr. Lewis: Well, I said following the incident. Prior to that, there have always been letters written to the minister pertaining to the issue of pit bulls.

Mr. Kormos: This wasn't the first incident involving pit bulls, the one that you referred to. There had been previous incidents involving pit bulls, and other breeds, quite frankly. Surely within the ministry there had been some interest by at least policy people, if not by drafters, given to options that might be put to a minister, should that minister inquire of the policy people about the options that were available.

Mr. Twohig: Certainly, there are options. No question.

Mr. Kormos: All right. So what were the options that the ministry had been preparing? This clearly is one of them. The pit bull ban was one of the options. What were the other options the ministry was working on in terms of controlling or enhancing the control of vicious dogs?

Mr. Twohig: Mr. Kormos, I'm not sure I'm at liberty to put the options.

Mr. Kormos: Fair enough, but there were other options?

Mr. Twohig: Oh, certainly.

Mr. Kormos: Were these options developed before the minister, Mr. Bryant, made his announcement, as I recall it, "Pit bulls banned"? I thought he was talking about George Smitherman, quite frankly. Were these options developed before that press conference?

Mr. Twohig: Press conference?

Mr. Kormos: Yes, the announcement by the minister.

Mr. Twohig: I don't believe the specific options you see before you now were developed, but we had a host of recommendations that had been put to us, chiefly from the Courtney Trempe inquiry and others.

Mr. Kormos: You talk about the consultations, the round table. How did you deal with the clear opposition of so many professional groups—veterinarians, humane societies, inter alia, as lawyers are wont to say? How did you deal with their clear, unequivocal rejection of breed-specific bans, intellectually?

Mr. Twohig: We didn't deal with anything, because we're not making the decisions. Those people put their views, and they put their views forcefully. There's clearly a divide in the opinion: those who favour this type of legislation and those who don't.

Mr. Kormos: Quite right.

Section 19—and reference has been made to it; that's the identification issue; again, Mr. Zimmer could help me on legal terms—doesn't even require *prima facie* evidence of a particular dog being a pit bull. It's only the allegation. In other words, as soon as an information is sworn, for the purposes of the court, that dog is a pit bull. Is that fair to say, subject to evidence to the contrary?

Mr. Twohig: If it's an information, then it's under part III. If it's under part IX, it's an affidavit.

Mr. Kormos: Sure, but as soon as an allegation is made that the dog is a pit bull, black becomes white and white becomes black. I'm not quarrelling with your drafting of it, but that's the effect of it, isn't it?

Mr. Twohig: Unless there's proof to the contrary.

Mr. Kormos: What's interesting about that is—because you're involved with the legalities of this legislation. Have you folks examined other legislation in the province that is as abrupt and perfunctory in creating a presumption based on mere allegation, as compared to even some evidence? What I recall, just from reading newspapers about legal cases and so on, is that in cases where there's a rebuttable presumption, there has to be some evidence. As a matter of fact—and Mr. Zimmer might help me on this—I recall the Alberta Court of Appeal, and then subsequent courts of appeal, upholding appeals and challenges to Criminal Code provisions that, for instance, dealt with fraud and false pretences charges where—what was it?—the mere returning of a cheque marked NSF was a presumption. The courts said that you can't have those types of presumptions; you need some evidence. So I guess what I'm asking is, surely you had some concerns about section 19 and whether it would withstand legal tests, didn't you?

Mr. Lewis: With respect to section 19, I think it's important to note the context we are talking about here. The context is that animal control is within the jurisdiction of the municipalities. Municipal bylaw enforcement officers are performing their duties now and there is a presumption that they will be reasonable in terms of deciding what constitutes a pit bull. In other words, there is a presumption that they will not go out there really gunning for dogs simply because they look like or they feel they might be a pit bull.

Mr. Kormos: Maybe I'm misreading it, because I read section 19 and it doesn't say anything about being reasonable. It says that as soon as there is an allegation—right?—then it becomes a fact, subject to being rebutted. Is that a fair interpretation? Am I reading that right or am I misreading that?

Mr. Twohig: That's correct.

Mr. Kormos: So where does the reasonableness come into this? You're counting on human nature?

Mr. Lewis: Not human nature, but the way a dog is apprehended. Municipal bylaw enforcement officers largely perform that role, and Bill 132 does not change that role by the municipalities.

Mr. Twohig: If your question is whether this section is unusual, yes, it is. There are a couple of provisions in the Criminal Code dealing with gun registries and it exists in a few other provincial statutes, but it's not common.

Mr. Kormos: And is it tested? Are you aware of it being tested? Is this going to be a horrible Achilles heel for this legislation, where it won't even fly because some clever lawyer, inevitably well paid, well dressed—not like myself, but well dressed. Surely some well-paid lawyer is going to go after that. Have you considered whether or not this section 19 has been tested?

Mr. Twohig: Section 19 hasn't been tested—

Mr. Kormos: The type of presumption, that very perfunctory presumption.

Mr. Twohig: In looking at the sections, and in particular I recall looking at the Criminal Code ones—

The Chair: Mr. Kormos, as requested, you are into your last minute.

Mr. Kormos: Thank you, sir.

Mr. Twohig: As far as I know, they are still in place and haven't been successfully challenged.

Mr. Kormos: Gotcha. I suppose I'll have to wait for other people to talk about whether the sterilization of these animals so that they're still around for 10 more years is designed to prevent the mere breeding of them or is in fact designed to make them more passive.

Mr. Twohig: We hear the latter, particularly from the OSPCA. That was one of their—

Mr. Kormos: Make them more passive?

Mr. Twohig: Make them more passive, yes.

Mr. Kormos: There's no need to ban them, then. Thank you kindly.

Interruption.

The Chair: Thank you very much, Mr. Kormos. I caution those attending that recognitions, by applause or by any other means, are not permitted at committee meetings of the Legislative Assembly.

Mr. Kormos: Mr. Chair, cut me some slack. How often does that happen to me?

Mr. McMeekin: Just a quick question. I too appreciate your coming out and sharing an overview of the legislation. I want to go right to your first point about the definition. You say on page 5 of the slide portion of your presentation that the proposed definition is substantially the same as the definition in Winnipeg's bylaw and

differs from Kitchener's bylaw in one respect: by not exempting purebred Staffordshire terriers.

We received statistics on the breeds of biters from the city of Winnipeg. Have you presented similar statistics from the city of Kitchener? If you have, I don't recall seeing them. Do we have similar statistics from the city of Kitchener?

0950

Mr. Twohig: I don't have them here at my fingertips, but I believe we received them at some point.

Mr. McMeekin: Could the committee, Mr. Chairman, be given those? I think if we're getting Winnipeg's stats and the definition is essentially in line with the Winnipeg bylaw, and similar to Kitchener's except in that one issue—I suspect from what we've heard so far that the definition, particularly around the breed, may be a contentious issue, and the Kitchener stats may help us to get some picture of that, so I'd appreciate seeing those. Thank you.

The Chair: I want to thank you very much for having come in this morning and for your deputation here.

Mr. Miller: Mr. Chair, I have the director of animal and bylaw services for the city of Calgary, Mr. Bill Bruce, who would like to appear before the committee, but because he's employed by the city of Calgary and doesn't want to be seen to be interfering in the affairs of Ontario, he needs to be formally invited by the committee to be able to come before the committee. I would like the committee to invite him to come before it. He has significant experience in animal control. The city of Calgary has seen some significant reductions in animal bites. They've had a 70% reduction in dog bites since they brought in their animal control bylaws, and that has happened while the number of dogs in Calgary has doubled. Mr. Bill Bruce would certainly be a very valuable person to lend his experience to the committee, so I would move that the committee invite him to appear before us.

The Chair: Mr. Miller has moved that Mr. Bill Bruce, the director of animal and bylaw services for the city of Calgary, appear before the committee. Is there any discussion on the motion?

Mr. Zimmer: These matters were taken up by the subcommittee, were they not?

The Chair: They were.

Mr. Zimmer: There was a witness list.

The Chair: There was.

Mr. Zimmer: Presumably this was raised then.

The Chair: It was not.

Mr. Kormos: I don't know the background of how this gentleman was brought to Mr. Miller's attention, at least, but the fact is that here's a director of animal and bylaw services for the city of Calgary. Reference has been made already to the city of Winnipeg. I trust that other municipalities that have advocated—and fairly enough, because they've implemented breed-specific bans—will be called upon.

I don't know what the position is of this gentleman from Calgary, but it seems to me that if the committee is

interested in getting the broadest range of information available to it—gosh, we've got e-mails from people in other British colonies, Australia, Great Britain. People are well aware—this has attracted attention internationally. If there's expertise available, why would we possibly shut the door on it? If these people are prepared to assist the committee, let's go; let her rip. Let's have these people in front of us. Quite frankly, whether they're from Calgary or not doesn't offend me. It's of even greater interest because obviously you've got a different provincial jurisdiction. I encourage people to support Mr. Miller's motion.

Mr. Miller: I would just like to support that by asking why we would not try to learn from the jurisdictions that have had the most success, and Calgary has had significant success. They've reduced dog bites by 70%. Here we have the director of animal and bylaw services willing to come before the committee, but he needs a formal invite to be able to come because he doesn't want to be seen to be interfering with the affairs of Ontario. They've had very significant success with an animal control bylaw that's not breed-specific, and I think we can learn from that.

If the end goal is to have the most successful legislation and to improve this legislation, I believe we should be inviting Mr. Bruce to come before this committee. I would ask for the committee's support in inviting Mr. Bruce to come and lend his expertise to the committee.

The Chair: Shall I now put the question?

Mr. Zimmer: This matter of the witness list should have been—if you wanted to make arrangements to raise this matter, it should have been raised before the subcommittee. This committee has set aside four days for hearings. There is an extensive witness list for each of the four days. Each of the witnesses has been allocated a time frame of approximately 10 minutes. The difficulty now with entertaining last-minute changes to the witness list is, where do we fit them in, and if we say yes to Mr. Miller's request, what should we do with other requests that might come up from any other members on the committee? There has to be some end to the process.

Mr. Kormos: The issue seems to be the reluctance of this municipal official to make a submission to this committee without invitation. Why doesn't the committee invite him to make a written submission? Surely that can't be offensive to anybody. It doesn't occupy any time of the committee, but it—

Mr. Zimmer: I'm going to agree. I think that's a reasonable way to proceed.

Mr. Kormos: In that case, you can interrupt.

Mr. Zimmer: That way, we'll get the relevant evidence before the committee and we'll preserve the integrity of the witness list for the remaining four days.

The Chair: Mr. Kormos has the floor.

Mr. Kormos: But he needs an invitation to make a submission so that he doesn't—

Ms. Monique M. Smith (Nipissing): Written submission.

Mr. Kormos: Well, God bless.

Mr. Zimmer: Yes.

Mr. Kormos: That's what I said already—so that he doesn't appear to be overriding his jurisdiction.

Mr. Zimmer: We're with you on this one, Mr. Kormos.

Mr. Kormos: You're on track now.

The Chair: Mr. Kormos, are you proposing an amendment to the motion?

Mr. Kormos: Mr. Miller may want to. I don't want to cut his grass.

Mr. Miller: I understand you're going to vote against this if we don't amend it. I'm getting that feeling. Is that correct? The thing is, you have more members on that side than we do on this side.

Mr. Zimmer: My argument here is that we've got a very tight witness list. It's been planned, 10 minutes per witness over four days, and it's unfair now to re-jig the witness list.

Mr. Kormos's proposal to accommodate this witness, or accommodate your wish to have him send in a written submission at our invitation, satisfies your purpose and preserves the integrity of the witness list.

Mr. McMeekin: I'll build on that. I suspect your political acumen is probably correct, Mr. Miller. I think the rationale for argument from this side is where do you draw the line? New Brunswick's looked at it. The provincial government in Australia has looked at breed bans. There are a number of cities. To have one isolated person in particular who has indicated a desire to make a presentation—I don't normally speak to amendments before they're made, but I think on the surface, because we opened this up, there are at least a dozen people I'd like to see invited. I think the concept of the written brief, as Mr. Kormos has suggested and my colleague Mr. Zimmer has affirmed—and hopefully you, sir, might look at—is a good way to go.

Mr. Miller: I would certainly like to reiterate that I believe we can learn from Calgary's animal control by-law; I would be prepared to modify my motion to invite Mr. Bill Bruce to make a written submission to this committee so that we may learn from the city of Calgary.

The Chair: Mr. Miller has amended his motion to read that Mr. Bill Bruce of the city of Calgary be invited to submit a written brief to the committee. Is there any further discussion? Shall I put the question?

All those in favour? Opposed?

Carried.

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Before we move to our 10 o'clock witness, Ms. Louise Ellis, it is a long-standing policy at the Legislative Assembly of Ontario that pets are not to be brought into the work environment. This includes any animals that may be the subject of proposed legislation before the House or its committees. The policy covers assembly committees sitting at Queen's Park or meeting at other venues in the province.

With the authorization of former Speaker David Warner, the workplace policy was stated by the executive director of assembly services in January 1994 as follows:

"The policy in this work environment is to allow animals into the precinct only if they are needed to assist disabled people. For example, those who are visually impaired may require a Seeing Eye dog.

"Security are instructed not to allow other animals into the Legislative Building or the Whitney Block."

I appreciate that there will be many points of view brought forward to assist committee members in their consideration of Bill 132. In this context, I would observe that, were we not to proceed in accordance with assembly policy, we could find ourselves contributing to a situation that, for some witnesses, would present discomfort or anxiety, or even intimidation. Our intention is the very opposite as a committee: We should hear and welcome as wide a range of opinions and information as possible pertaining to our mandate.

As Chair of the committee, I request the assistance of all those coming before the standing committee in respecting our workplace policies.

I'd like to call at this time Louise Ellis to—

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): One moment, Mr. Chairman. That was discussed at the subcommittee, with your own member there, and we agreed at the subcommittee level that we weren't going to get into what you just spoke about in terms of telling people in the subcommittee that you wouldn't be allowed to bring an animal in, because we were going to deal with whatever happened at the hearings.

So I don't know why you're raising it as Chair, when it was discussed at the subcommittee meeting and was decided, over your suggestion, not to put in the subcommittee minutes. So if you're going to do those things, you should raise it with the subcommittee so we know what you're going to be saying at the hearings, since we've agreed at the subcommittee level not to do that.

The Chair: Thank you, Mr. Tascona. I clarified the matter with—

Mr. Tascona: Run your committee meeting through the subcommittee, please.

The Chair: Thank you.

LOUISE ELLIS

The Chair: I'd like to ask Ms. Louise Ellis to come forward, please. Please have a seat anywhere you wish. You have 10 minutes to make your submission to us. Would you start, please, by identifying yourself for the purposes of Hansard. You may use your 10 minutes in any way you wish. If there's time remaining at the end of your comments, the time will be divided among the parties for questions. Please proceed.

Ms. Louise Ellis: Thank you. Good morning. My name is Louise Ellis, and I am the mother of a child who was attacked by a pit bull 10 years ago, here in Toronto. Thank you for the opportunity to speak.

The handouts I have brought with me today are copies of a package that I sent to Attorney General Bryant when I first heard that he was going to address the issue of pit bulls in our society. I was delighted to hear that someone

actually had the wherewithal to finally do something about the pit bull situation in our communities.

Shortly after the attack on my daughter in 1994, our family and friends approached our city government, mayor and city councillors, with only one real response we received: Mayor June Rowlands wrote that the situation regarding pit bulls would be looked at. Nothing happened at city hall, and no one would take a stance with this controversial, "What do we do about the pit bull issues in our community?"

Shortly after the attack on my daughter, a horrible death took place here in the city of Toronto. A man was killed when he entered a dwelling. He was killed by two pit bulls, Apollo and Rage. I never forgot their names. Since this attack was so close to the attack on my daughter, I did not sleep well for a long, long time. The horror is beyond words. Now, one would think that the death of a human being by pit bulls would raise a flag to address the situation. That did not happen.

Last fall, 10 long years and 10 years of many, many more horrendous pit bull attacks all over the province, I heard the news of Attorney General Bryant, the first person I had ever heard was taking the matter seriously. As painful as this is for me to relive this episode of my life again, I will. I will do this for the sake of the new legislation and for the public safety of all Ontario people.

I have no statistics with me to back up what I will say, nor do I have a degree of any sort. Much of what I have learned, however, is from first-hand life experience: the pit bull attack on my daughter 10 years ago and communications with others over the past years. I have paid attention to the media coverage both for and against the issues regarding Bill 132. I have done some research on the Internet regarding pit bulls.

Adding all of this up together with my feelings allows me to sit here in front of you and share my opinion regarding the proposed new legislation. I will do this for my daughter and I will do this for all other victims. You cannot forget the victims of these pit bull attacks.

It's about public safety. This is what this new legislation is all about. It's not about dog owners compelled to turn in their pets. These owners will be allowed to keep their pets. The people who will give up their pit bull are most likely looking for an excuse to surrender it, perhaps are sorry they acquired it in the first place or are afraid of it themselves.

Pit bulls are bred for their strength and specific temperament. Most are purchased for reputation for strength and violence. Unless you have witnessed an attack by a pit bull, you cannot possibly understand the severity of the attack. These beasts don't just bite or nip and leave a bruise like most other dogs. They sink their teeth into the skin and shake it and pull it and rip away until the victim, be it an animal or a human, succumbs to its attacker.

I witnessed the attack on my daughter, who was five years old at the time. We were walking along the Danforth when the attack occurred. The animal lunged at her and let go only because her knees buckled and she fainted down into my arms. The damage to her face was

horrible. The beast left a gaping hole just under the eye so deep that you could see the little bones in her face. The tear duct was hanging on by a little piece of skin, and it's amazing her eyeball didn't fall out. I thought the pit bull had actually eaten that part of her face. Had she been a couple of inches taller, the animal would have sunk its teeth into her jugular vein. After five of hours of surgery at the Hospital for Sick Children, 300 stitches to the inside and out, the doctors had done their best to repair the damage, a nightmare caused by the pat of an innocent child to an unpredictable pit bull.

The animal was not teased or provoked. The owner said it was friendly and that it was OK to pat it. The dog was ordered to be muzzled because it had attacked another dog previously. That day, the pit bull was not muzzled. After attacking my daughter, it turned on the girlfriend of the owner, ripping a gash in her arm from the elbow to her wrist. The flesh and muscle of her arm were dangling like an explosive had just gone off. It took seconds for this beast to cause her wounds.

What the owners of pit bulls don't offer up is that their dogs are not human, and no one can predict what they will do. No person should be allowed to say that their dog is friendly and won't bite. It is an animal. It has the brain of an animal. As much as some would like to believe their pet is human, it is not human. Pit bulls are unpredictable. I have read that they wag their tails just before an attack to make everything seem and look like all is well. The pit bull that attacked my daughter was wagging his tail and just enjoying himself, getting positioned and ready for his attack.

The animal rights activists will try to tell you that pit bulls don't harm people; pit bull owners harm people. Lord, how I wish the owner had bitten my child instead of his dog. The wound have been far less severe.

I have heard the "It's OK, my dog is friendly" line countless times since that day, and it makes my blood run cold to think that intelligent human beings can predict what their animal will do, or better yet, what they won't do.

When I walk down the street and see a pit bull coming toward me, I automatically cross to the other side. Why should I have to cross the street to walk? Why should I be afraid to take my grandchildren to the park for fear of a pit bull?

Of the many, many people I've spoken with, there are only a few who would like to sit on the fence with regard to the proposed new laws. During these hearings, the victims will not be as loud as the animal rights activists, but our voice must be heard. The wounds are real and the fear is very real. We are not on trial, but our trial is to overcome the tragedy of our attacks, and we stand trial every time we relive our horrific and terrifying ordeals with a pit bull. I support this new legislation because it is about public safety. Please don't forget the victims of pit bull attacks, and let us know that there will be far less, and eventually no more, attacks on innocent human beings by the pit bull.

The Chair: Thank you very much. We would have time for perhaps one brief comment.

Mr. Kormos: Thank you very much, Ms. Ellis. Trust me, I suspect many of us will be making frequent reference to your submission during the course of this debate as we put your comments to other witnesses.

Can I ask you this: Was there litigation? Was there a lawsuit initiated in the instance of your daughter against the owner of this dog?

Ms. Ellis: The owner of the dog was charged with criminal negligence.

Mr. Kormos: Under the Criminal Code? I know he was charged, according to the press report, with Dog Owners' Liability Act charges. What happened with that charge?

Ms. Ellis: The Dog Owners'—sorry. I'll give this to my husband.

Mr. Tom Ellis: It never went through. The dog's owner was never charged under the Dog Owners' Liability Act. I laid charges. I charged him with criminal negligence causing bodily harm and I changed him with being a common nuisance.

Mr. Kormos: What happened to the criminal charge?

The Chair: Sir, for the purposes of Hansard, would you please identify yourself.

Mr. Ellis: My name is Tom Ellis. I'm the husband of Louise.

He pled guilty to being a common nuisance and he received a year in jail.

Mr. Kormos: Was there an application under the Criminal Injuries Compensation Board or a lawsuit against the owner?

Ms. Ellis: We applied to the Criminal Injuries Compensation Board.

Mr. Ellis: But as far as the lawsuit against the owner, he was rather indigent so there wasn't much point in going through that.

The Chair: Thank you so much for your deputation here this morning.

Mr. Kormos: Chair, if we can put to legislative research—because I think this is important. Obviously, if a conviction is obtained under a provincial statute, there is no access, insofar as I understand it, to the Criminal Injuries Compensation Board for compensation for personal injury. If there is a conviction under the Criminal Code, then obviously there is. So if we could some data on the types of charges that have been laid, the types of convictions that have flowed—and obviously one of the concerns that people might have is a Criminal Code charge like the one that was referred to that is resolved by way of plea bargaining to, let's say, a provincial offence. I think it's valuable for the committee because one of the issues that I am concerned about is, when there is liability on the part of a dog owner, how does a victim litigate against an impecunious bad-dog owner—Dog Owners' Liability Act?

The Chair: Legislative research has recorded the request.

Mr. Kormos: I appreciate that. Thank you.

The Chair: I now call upon Ms. Cathie Cino, Cat and Jack K9 Safety, please. Is she in the room? OK. Do we

have present Barry MacKay, Canadian representative, Animal Protection Institute? OK. Is the representative of the city of York present? OK.

With our next scheduled deputation not present, this committee will recess—

Mr. Kormos: Chair, could the clerk make some inquiries, if they can be made by phone, to determine whether there are travel problems or whether these people have just lost interest?

The Chair: Yes. We will recess for five minutes while the clerk does exactly that.

The committee recessed from 1012 to 1020.

The Chair: Ladies and gentlemen, thank you very much for coming to order, and thank you for being seated. Let's try again to see if some of our missing deputants have shown up. Cathie Cino: Cat and Jack K9 Safety? Going once, going twice. Is she here? Is Mr. Barry MacKay here?

Ms. Shelley Hawley-Yan: I will be presenting for Barry. My name is Shelly Hawley-Yan.

PROJECT JESSIE

ANIMAL PROTECTION INSTITUTE

The Chair: As our deputation for 10:10 is checking in, perhaps we can simply reverse the order and hear from the Animal Protection Institute at this time. Would you please come forward? For the purposes of Hansard, kindly introduce yourself. You have 15 minutes. You can use this in any manner you wish. You can speak for the whole time or you can leave some time remaining, in which case the time, if it's appropriate, will be divided equally among the members of the three parties.

Ms. Shelly Hawley-Yan: Thank you. My name is Shelly Hawley-Yan. I'm a director of Project Jessie and I'm speaking on behalf of Mr. Barry MacKay, who is the Canadian representative for the Animal Protection Institute.

Dear Chairman and members of the committee, I'd like to thank you for the opportunity to appear before you on this highly charged and very emotional issue.

It is the opinion of both API and Project Jessie that breed-specific legislation is not an effective means of preventing dog bites or of protecting the general public from dangerous dogs. We are not opposed to a dangerous dog law per se, but Bill 132 will not solve the problem; indeed, it is likely to exacerbate it.

We have examined existing statistics and reviewed expert opinion on the causes of canine aggression and bite prevention. We would like to submit for the committee's consideration and recommendation some viable options for implementing effective dangerous dog laws.

We are in favour of really promoting responsible ownership and passing legislation that would enforce that. Non-specific dangerous dog laws are based on the premise that any dog can bite and that a dog of any breed can be treated in such a way that it would encourage aggression. Non-breed-specific legislation focuses on the

quality of ownership, placing responsibility for the dog's actions squarely on the owner.

Project Jessie is a rescue network, and we've been in existence since 1991. In those 14 years, the program has rescued well over 2,000 dogs from pounds and shelters completely across Ontario. Most of those dogs have been in my own car at some time in the process, either driving from the shelter to a vet or to a foster home, and many of them have been fostered and lived in my own home.

Have I ever been bitten by a Project Jessie dog? Thankfully, I haven't. But I am very good at reading a dog's body language and I have pretty good reflexes. Have I ever been snapped at? Yes. But the conditions under which these dogs have lived in a lot of cases are incredibly appalling and very stressful. Some of them have been abused. Some of them have been neglected. Certainly they've all been strays in some way—they've been dumped or have gotten away and been caught. Living in a pound situation is stressful for the animals. Then, they're picked up by me, a stranger, and taken to a vet, where I hold them while they get needles and those sorts of things. If a dog is likely to bite, they're the perfect conditions; we're pushing them, and then we're likely to see that.

What kinds of dogs have snapped at me? Jack Russells, chihuahuas, beagles, terriers. Any kind of dog is capable of biting, and that's really the point of it. Focusing on a specific breed, whether it's pit bulls today or whatever breed it's decided is going to be discussed tomorrow, is really giving the public a false sense of safety and doing nothing to fix the real problem, which is irresponsible owners behaving badly with whatever breed or mix of breeds that they have chosen to live with.

API and Project Jessie have a number of recommendations that we would like to submit to the committee. The first is, we would recommend that the committee oppose Bill 132 in its current form. The second is, urge the Attorney General to withdraw the bill. The third is, recommend that he work with provincial experts such as the College of Veterinarians of Ontario, the Ontario Veterinary Medical Association, the OSPCA, animal behaviourists and representatives from other jurisdictions to implement effective, enforceable, cost-efficient and humane dangerous-dog legislation, such as was passed by the state of New York last year. I have actually attached that statute as an appendix to the document that I put forward.

I would like to see the committee raise concerns that this legislation is punitive to a poorly defined class of dogs, regardless of their temperament and even where there is no history of biting. For example, the legislation does not allow for situations where animals bite because of physical abuse, neglect, starvation, injury, poisoning, training or the use of drugs. It fails to address the root cause of the issue, which is the inappropriate breeding and selling of these animals through backyard and puppy mill breeders and their training as guard and fighting dogs. It does not ban the practice of tethering dogs 24 hours a day, seven days a week, which is a well-known trigger for biting and aggression.

Our rationale for opposing the bill: First of all, the Attorney General and the provincial government are downloading substantial costs to the municipalities, including costs to implement the legislation, ongoing costs for housing and killing substantial numbers of seized and/or surrendered animals, and the huge costs of housing seized animals for extended periods while the seizures are being challenged in court.

As the American Society for the Prevention of Cruelty to Animals, the ASPCA, points out in its paper, *Laws to Control Dangerous Dogs based on Breed*, "In Prince George's county, Maryland, for example, the animal management division estimates that of the 900 pit bulls seized and killed annually under that county's ... ban, 720 or" at least "80% are not dangerous. In addition to expenditures in excess of a quarter of a million dollars" simply "to enforce the ban, the county is compelled to house the seized dogs until court cases conclude, necessitating euthanasia of many other dogs simply due to space constraints."

This is going to be a huge issue for most municipalities. Pounds across Ontario are almost always full. If municipalities are housing suspected pit bulls awaiting their day in court, they will have to be euthanizing other animals as well—those animals that could have been sitting in those cages being put up for adoption—simply because there's not going to be enough space for them all.

The bill is not just going to kill pit bulls; it's going to kill thousands of other dogs in this province as well.

In most municipalities, animal control programs are already understaffed. The additional workload and costs to implement Bill 132 would add significant stress to an already understaffed and underfunded service.

The Attorney General and the provincial government have downloaded all of the legal liability and responsibility to the municipalities, which are required to implement and enforce an extremely difficult and contentious piece of legislation.

We have been in e-mail contact with the mayors of a great many of the municipalities in Ontario, and without exception, all of them have indicated that they would anticipate having great difficulty implementing the bill as it's written.

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What kind of compliance are you likely to achieve if this bill passes? It's going to depend on the finances, the size and the determination of each individual municipality. If this bill is intended to create a uniformity of safety across the province, I believe it will fail in that regard. You will still have areas where the ban is rigorously enforced and every heavy-headed, stocky dog is declared a pit bull type and killed regardless of behaviour, and you'll have other areas that will continue to evaluate dog breeds and dog individuals based on their temperament, and these same sweet dogs will be called boxer crosses or Dane mixes or Lab crosses in those municipalities where they don't have the finances or the willpower or the bodies to enforce it.

This bill will do what other breed-specific legislative initiatives do: It will compromise public safety. Again, as the ASPCA notes, "Perhaps the most unintended yet harmful consequence of breed-specific laws is their tendency to compromise rather than enhance public safety. When limited animal control resources are used to regulate or ban certain breeds of dog, without regard for behaviour, focus is shifted away from routine, effective enforcement of laws that have the best chance of making our communities safer: dog licence laws, animal fighting laws and laws that require dog owners to inoculate and exercise control over their dogs, regardless of the breed."

Bill 132 will result in the demonizing of municipal animal service officers, who will be forced to seize healthy, friendly animals, including puppies born after the ban is in place, and kill them just because of their appearance. The bill creates a confrontational atmosphere between those who own dogs and the bylaw officers and undermines the effectiveness of animal care and control services. Animal control personnel are not trained or qualified to identify the breed of dog. In fact, even practising veterinarians in this province receive no formal training in breed identification.

The bill will result in higher euthanasia rates for all animals in shelters. More pit bulls will be killed, more animals deemed to look like pit bulls will be killed, and more dogs in the shelter will be killed regardless of breed because of the use of cage space to hold seized animals under this legislation when there is a legal challenge. In my opinion, this is absolutely the most dangerous part of the proposed legislation. As the bill says in clause (e), "A member of a class of dogs that have an appearance and physical characteristics that are substantially similar to dogs referred to in any of clauses (a) to (d)." What does this really mean? As the minister so amusingly demonstrated on television a few weeks ago, it is very difficult to identify what a pit bull is. We've worked with pounds from the very best to the very—

Mr. Kormos: That was a very embarrassing moment.

Ms. Hawley-Yan: I bet it was, but it is very difficult.

We've worked with pounds from the very best to the very worst across this province—

The Chair: Just as a reminder, you have about one minute left.

Ms. Hawley-Yan: OK. I've been told over the phone that a dog in need of rescue is a pit bull, gotten there and found no evidence whatsoever; I couldn't see the breed at all in this dog. I've also fostered puppies—I had a litter this summer, where I know the mother was a shepherd and the father was a Great Dane. Now that these puppies are bigger, they have a heavy head, they're largely black and they have brindle legs. If one of them was to stray, could they be determined to be a pit bull? Certainly, if you were of a suspicious mind, and I know there's no pit bull in them.

The Chair: Thank you very much for your submission.

I'd like now to try again and call Cathie Cino, of Cat and Jack K9 Safety.

Mr. Kormos: Mr. Chair, if I may address a matter to legislative research once again, this is with respect to the most recent submission. On page 4 of her submission, she makes reference to the Centers for Disease Control and its conclusions around, amongst other things, chaining and tethering a dog and that it's 2.8 times more likely to bite, and also that "70% of all dog-bite-related cases involve male dogs that have not been sterilized." If we could please have data from the province of Ontario about dog bites: male versus female, sterilized versus non-sterilized, and—I suppose the concept of tethering would be difficult. It should be a part of the data. If there's history on these dogs that would help.

If we could also get this reference, there's reference to the report from the Centers for Disease Control in Atlanta. When I was speaking in the Legislature, I know some of the government members were giggling, saying, "Oh, what have they got to do with dog bites?" It appears that they're something of an authority. If we could get the material from the Centers for Disease Control from Atlanta on dog bites and on the preconditions or the circumstances which give rise to dog bites—

The Chair: Thank you. Legislative research has recorded your request.

Mr. Kormos: Thank you kindly.

CAT AND JACK K9 SAFETY

The Chair: Thank you for coming this morning.

Ms. Cathie Cino: Thank you. My apologies, of course. I'm coming from out of town and didn't allow for that Toronto traffic well enough.

Mr. Kormos: Where were you coming from?

Ms. Cino: Grimsby.

The Chair: Well, you're here now. Could you please start by identifying yourself for the purposes of Hansard? You have 15 minutes for your submission this morning.

Ms. Cino: My name is Cathie Cino, and I'm with an organization called Cat and Jack K9 Safety, which is about teaching children dog bite prevention through educational material.

Today you will hear from the experts. From the breeders to the veterinarians and everyone in between, we all stand united against this proposed legislation. Bill 132 wilfully legislates profiling, prejudices and paranoia, which is what it will create.

I would first like to express my sincerest sympathy to anyone who has been the victim of a dog bite. I work each day, including later on this afternoon, with dangerous dogs. I understand the terror, the feeling of helplessness and, of course, the pain that one endures when attacked by a dog. Whether you were a victim as a child or in more recent years, the nightmares can continue, and I have felt the pressure from jaws of Rottweilers and German shepherds, golden retrievers, dachshunds, and many numerous ankle biters. Irrelevant to the severity of a bite, it will most definitely leave a mark. I find it very discouraging that our Attorney General is ignoring the

thousands of victims simply because their attackers are not on his agenda.

An aggressive dog can come from any economical background and any home. The Attorney General has listened to the victims' emotional pleas and responded to that with this proposed ban, but he hasn't quite considered all of the facts. As a director of Cat and Jack, I am here to encourage public awareness, to offer our recommendations and provide a few drawbacks to specific-breed legislation.

Since we've welcomed dogs into our homes, it is our responsibility to understand them. Today, more than ever, dogs have become a very treasured family pet, and the pet industry generates billions in revenue. You could buy just about anything for your pampered pooch. All of this misplaced indulgence is actually creating a negative effect. Don't be fooled into thinking that aggressive behaviour only comes from abuse and neglect. Most of my clientele can afford the hard costs of training and veterinarian expenses. They do provide the stability of a loving, nurturing environment. Therefore, why aggression? It seems so unlikely. Yet in all breeds, shapes and sizes, we have seen some of the worst and most ridiculous behaviours.

It is the lack of understanding of basic dog behaviour that needs to be addressed. The dog training industry is constantly evolving. Techniques improve year after year. Knowledge is gained by all of these professionals, and the dog enthusiasts here today are your solution to creating a safer community.

1040

But when we blame the dog, we continue the cycle. The dog is a symptom; he's not the cause. They are not born vicious, and I'm sure you will hear from more than one person over the next four days that we know they are not born to attack. Nature versus nurture: They learn it, usually from us. Most of the time it's unintentional. Owners don't recognize early signs of dominance or aggression, which simply allows a really bad habit to have developed. Some behaviours were just ignored or possibly shelved away in hopes that they would grow out of it. Then there's just the "love is blind" theory: If you find yourself repeatedly excusing the behaviour of your dog, you are contributing to a delinquent.

A sample plan of action for greater public awareness could include things such as public puppy packs. This could be organized through the Ontario Veterinary Medical Association, as they could be the ones to distribute information regarding those warning signs. Public service announcements are a wonderful way to reach all of Ontario, from the rural areas, of course of Grimsby, to the city of Toronto. We need to teach people how to detect a predator in their community and then offer appropriate solutions. We need improved media coverage, not just of how dogs attack, but why. Bite-proofing for kids: This is what I am most passionate about, what I believe is our sole answer to this problem, but we need one recognized agency so that there is a clarity being given out to all the children.

Biting is a socialization issue, not a breed issue, which means we need to educate and encourage dog owners' proper socialization techniques. There's this very confused thought amongst pet owners today. They're so misunderstood. They just don't understand what they're allowed to do as a pet owner. That ranges from punishment, which we don't want to encourage—but how do you deal with a problem behaviour if you can't punish it? So this is the thing we need to work on most with our pet population.

In 1995, a golden retriever viciously lunged at a child in a schoolyard. In response, that school's parent council requested that Cat and Jack come to their school and help educate their children on preventive issues, safety guidelines and how to recognize the warning signs of a potential attacker. If you read yesterday's paper, there was an article in which Dr. Stanley Coren, who is from the University of British Columbia—he's a psychologist and dog expert. I'm just going to read a quick quote: "Statistics show that simply taking a dog through a basic obedience class reduces the likelihood that it will bite by 90%, while giving one hour of instruction on 'bite-proofing' to children reduces the risk that they will be bitten by more than 80%. Combine both dog obedience and child education, and you can reduce dog bite injuries by 98% without banning any specific breed of dog."

The Chair: As a reminder, you have a little less than three minutes.

Ms. Cino: Thank you. We have an opportunity to be a leader in dog bite prevention. Over the last 10 years, I have been working aggressively at initiating educational programs throughout communities. I am very frustrated that past victims have not prompted our government to action. What is more disheartening is that nothing in this legislation would have saved those victims. From across Canada, a few offenders have been a bull mastiff, a Rottweiler, a German shepherd and a collie.

What I propose to you is to put together a committee with all of these experts who have been here today—pick and choose wisely—who can help you gather up the best legislation to ensure our public safety. With the agreement of all the experts, this can be done. New Brunswick, as you understand, has just decided and agreed that a ban is not the way to go. Responsible dog ownership is the solution.

Thank you very much for your time.

The Chair: Thank you. We'll have time for just one brief question, and it's the turn of the Liberal caucus.

Mr. Zimmer: Just briefly, you raised the nature-nurture argument. As I understand your argument, you adhere to the nurture argument; that is, there are no innate qualities in dogs—they learn them from their owners and so on.

I'd just put this proposition to you. It's common knowledge and everybody knows that Labrador retrievers retrieve things. They retrieve ducks, they retrieve—all that is in their nature. It's in the nature of collies to herd sheep. That's what they were bred for in Scotland: generations and generations of collies herding sheep. It's in the nature of hound dogs, through their sense of smell and

sniff, to track things down: to find lost children, to find escaped prisoners, to find things. In your view, why were pit bulls bred, and what is their innate nature?

Ms. Cino: I have been thinking of that answer for a long time, and I'm uncertain I have a clear answer. If I were to look at the inherent disposition of a pit bull, which we know was of course meant to fight in pits, then we could say, yes, with those particular breeds—no different than the English bulldog, which was outlawed over 100 years ago because of the blood sport they were encouraged to do—then we should say that inherently they are killers. But if you ever watch the commercial for Kibbles 'n Bits and you know what an English bulldog looks like, I don't think many of you here would find yourselves fearful of them.

The Chair: Thank you for your presentation. We'll have to move on now.

Mr. Tascona: Mr. Chairman, do we have something in writing? The clerk could photocopy it for the committee.

Ms. Cino: Sure.

Mr. Tascona: Can we have that done, Mr. Chairman?

The Chair: All right. I'd like to call the city of York—

Mr. Tascona: She's offered to have it photocopied. Can the clerk photocopy it?

The Chair: I said yes.

I'd like to call the city of York, Susan Auld, please. City of York?

OK. Is Cathy Prothro, American Staffordshire Terrier Club of Canada, in the room?

Ms. Cathy Prothro: Yes.

Mr. Kormos: Chair, while this woman is seating herself, can I ask legislative research to please—this nature-nurture and all of the anecdotal comments that have been made about it are interesting, but I suppose what's even more interesting is the position that's going to be put forward that some dogs bite in particular ways as compared to the way other dogs bite. That's been put forward to the committee already. Can we ask legislative research please to give us scientific data, research data, on (1) the existence of inherent qualities in dogs, as Mr. Zimmer made reference to, and (2) the physiology, I suppose, of various breeds which makes a biter in one breed more dangerous than a biter in another breed? I'm not talking about the ankle-biter reference, the little chihuahua; I'm talking about whether—because we've heard all this stuff about dogs whose jaws lock and don't lock. My concern is myth versus fact. So if we can get hard data in that regard from legislative research, I'd appreciate it.

The Chair: Thank you. Legislative research has recorded your request.

1050

AMERICAN STAFFORDSHIRE TERRIER CLUB OF CANADA

The Chair: OK, Ms. Prothro, would you please sit down and join us. Welcome to the committee hearing this

morning. Would you please start by stating your name for Hansard. You have 15 minutes, which you can use in any way you wish. If you leave any time at the end of your submission, it will be divided equally among the parties for questions to you.

Ms. Cathy Prothro: Okey-dokey. Well, I'll start. My name is Cathy Prothro and I'm from Dartmouth, Nova Scotia. I am the founding president of the American Staffordshire Terrier Club of Canada. I am also the secretary-treasurer of the Dog Legislation Council of Canada. I am the AmStaff club representative for the Banned Aid Coalition. I have owned AmStaffs since 1978 and bred under the Barbarycoast prefix.

Mr. Kormos: Are these the nanny dogs?

Ms. Prothro: No, we're not nanny dogs. We're sort of nanny dogs, but it doesn't say it in our standard.

I am an international specialist for the American Staffordshire terrier and have judged them at national shows in Germany, Russia, Yugoslavia, Romania, Sweden, Holland, Spain, Poland and the USA.

I would like to start my presentation by thanking the MPPs for the opportunity to present here today in regard to Bill 132, and I would like to thank the Honourable Michael Bryant for bringing the problem of irresponsible dog ownership to the forefront. I am here today not only in defence of the American Staffordshire terrier but also in defence of all dogs and responsible owners who would be unjustly penalized if Bill 132 were to be effected as it is currently written.

Included in my package is a synopsis of the American Staffordshire terrier, including breed history, the American Kennel Club/Canadian Kennel Club standard for AmStaffs, and the code of ethics from the American Staffordshire Terrier Club of Canada. Also enclosed is a paper by the American Canine Foundation entitled Breed-Specific Legislation: Does It Work? Dangerous Dogs or Dangerous Owners? Finally, included is a study from a university professor, Dr. Irene Sommerfeld-Stur, Institute of Animal Breeding and Genetics, University of Veterinary Medicine, Vienna. These two studies are on a CD and they've been given to the clerk for copies to go to the MPPs.

I ask that you read this information in its entirety to ensure your grasp of the breed differences you are dealing with, as well as to understand the depth of work that has been done internationally in studying BSL and in concluding pretty much universally that it does not effectively address the problem of dog bites.

In 2002, five litters of AmStaffs were registered with the CKC, totalling 35 individual dogs. AmStaff breeders were exceptionally busy in 2002, because in 2003, three litters were born, 24 individual dogs; in 2004, two litters, 16 individual dogs. This is nationally. This is not just Ontario; these are national statistics. I, for one, had a litter in each one of those years, with two pups being sold to Ontario. The majority of my pups went overseas and to other parts of Canada and the United States.

AmStaffs have been bred since 1936 as companion dogs and stock dogs. They are shown in conformation and compete in obedience and agility trials. They are fly-

ball dogs, St John therapy dogs, search-and-rescue dogs, hearing ear dogs, and in Europe are used as Seeing Eye dogs. How then did AmStaffs get on the Attorney General's hit list of proscribed breeds? Why the Staffordshire bull terrier or the American pit bull terrier, for that matter, both registered breeds with the same track record?

It is evident that Bill 132 has included anything similar in type to what it considers to be a pit bull. This word does not denote a breed but is rather a generic term used to describe any short-coated, muscular dog, a term that could be equated to retrievers, to pointers, to beagles, to boxers, and to most mongrels, in fact, which encompasses so many breeds and crossbreeds that they are too numerous to mention here. How then is it possible to ban something with no legal description or definition?

There have been no recorded bites, attacks or fatalities on a human by a CKC-registered American Staffordshire terrier in Canada—none, never, not ever.

So are we dealing with guilt by association? Are the proscribed breeds named in Bill 132 targeted because they look like the dogs you might find on the street corner? Is it because you can't tell the difference among the dogs, so you have to suggest banning them all? Because they share similar ancestry? These are not good enough reasons for the targeted extermination of a type of dog. For this type of racial profiling, it amounts to nothing more than canine ethnic cleansing. This is why I am here today. Please rest assured that even if AmStaffs were not proscribed, I would still be here, as breed-specific legislation is an ineffective, costly, knee-jerk reaction to the problem of irresponsible dog ownership.

I would now like to debunk two of the most famous theories: first, the locking jaw theory or 2,000 PSI jaw pressure. There has been extensive research in this area. Dr. I. Lehr Brisbin, Ph.D., professor of ecology at the University of Georgia and a scientist for the US Department of Energy, Savannah River Ecology Laboratory in the field of animal behaviour, states—and this is from the ACF paper *Breed-Specific Legislation: Does it Work? Dangerous Dogs or Dangerous Owners?*

"I have conducted extensive research on the two basic issues raised by the controversy surrounding the anti-pit bull legislation; to wit: Is there any credible evidence that the bite of the pit bull is either stronger or more damaging than that of the various other heavy breeds of dogs? And is there any credible evidence that pit bulls are more likely to attack and/or bite in a dangerous way than any other breed of dog?

"The studies have been conducted on the structure of the skulls, mandibles and teeth of pit bulls showing that, in proportion to their size, their jaw structure, and thus its inferred functional morphology, is no different from any other breed of dog in comparable size and build.

"Further, there is no evidence of the existence of any kind of 'locking mechanism' unique to the structure of the jaws and/or teeth of" American pit bull terriers.

"Films and eyewitness reports of the biting behaviour of APBTs indicates that these dogs tend to hold the bite for longer periods of time than any other breeds, which

tends to slash, tear, then release. This holding-type bite is less likely to cause death from exsanguination, which has been documented as being one of the leading causes of death following severe dog bites. In their role as 'catch dogs' used on livestock and big game, APBTs have proven their ability to use this holding type to immobilize their quarry without causing serious injury or tissue damage, as compared to what would be expected of the slashing-type bite of other breeds. It is for these reasons that APBTs have long been specifically selected for use in the kind of work where it is important that the dog's quarry should not be seriously injured. There are cases, for example, where APBTs have proven to be invaluable research tools in both university- and government-sponsored research programs aimed at studies of the ecology and behaviour of big game animals."

On "ticking time bombs" and "inherently vicious": In her study *Regarding the Question of Particular Aggressiveness of Dogs Based on Affiliation with Certain Breeds*, Professor Dr. Irene Sommerfeld-Stur conclude in her 24-page study, "There exists no valid scientific proved evidence that some special breeds are more dangerous than others. Therefore, it is not acceptable from the scientific point of view to classify a single dog as dangerous only due to the breed it belongs to."

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Dr. Mary Lee Nitschke, Ph.D.: "Variability in behaviour has a wider range within a breed than between breeds. Within the discipline of psychobiology and animal behaviour there is no data from empirically supported studies, published in refereed scientific literature, to support the idea that one breed of dog is 'vicious.' The adult behaviour of a domestic dog is determined overwhelmingly by its experiential history, environmental management and training."

There is no scientific proof that genetics cause a breed of dog to be aggressive, vicious or dangerous. Irresponsible owners are to blame for the behaviour of dogs that are aggressive, vicious or dangerous. Breed-specific legislation is an injustice—canine genocide.

From attorney S. Zendorf: "On August 30, 2002 the Alabama Supreme Court affirmed a circuit court decision that four American pit bull terriers born at Huntsville Animal Control Shelter 'did not lack any useful purpose' as required by the local ordinance." *Huntsville v. Four Pit Bull Puppies*, unreported. "The court determined that the puppies were not trained to fight and were not vicious. In addition, it held that three women who wanted to adopt them had the right to intervene." I've also included the Alabama decision in my presentation.

The Chair: I remind you that you've got about two minutes remaining.

Ms. Prothro: "The city of Huntsville claimed the pit bull puppies were genetically dangerous, used expert witness testimony, and appealed to the Alabama Supreme Court after the lower court rejected its arguments and evidence.

"The Alabama Supreme Court granted the Washington Animal Foundation's petition to participate in the proceedings as *amicus curiae* because the foundation is an

expert on canine genetics. The foundation provided expert testimony to prove that pit bulls and other breeds were not inherently genetically dangerous and must be trained to fight.”

Please rest assured that breed bans do nothing to stop dog attacks. They do nothing to stop illegal activity. They do nothing to protect the public from irresponsible dog owners. But they do punish responsible dog owners, causing court litigation, wasted tax dollars, and impoundment of innocent dogs while criminalizing Canadian citizens.

Non-breed-specific laws are for the protection of the public welfare and safety with the degree of precision that characterizes effective legislation.

I would ask the committee to take the BSL aspects out of Bill 132 and amend it to target irresponsible owners and to hold people accountable for their canine charges. The city of Calgary developed and implemented the premier dog laws in North America. I would urge the committee to look very seriously at Calgary. It is effective and pays for itself. Let’s work together for Ontario to be the first province in Canada to have a premier law and set a precedent for the rest of the country. Thank you.

The Chair: Thank you very much. Unfortunately, you’ve used up all of your time and there won’t be an opportunity for questions to you.

Mr. Zimmer: Could I just ask the witness for the citation from Alabama?

The Chair: If the deputant is willing to provide it to you privately, that would be fine.

Ms. Prothro: It’s in your package.

The Chair: It’s in the package? OK. Our time for this deputation has passed. Thank you.

Is the National Capital Coalition for People and Dogs represented here this morning: Candice O’Connell and Martha Russell? OK.

Mr. Zimmer: Mr. Chair, I just want to note for the record that the Alabama court decision, as I make it, is Alabama, August 8—oh, I’ve got it here. Sorry.

Mr. Kormos: Chair, before we move on, to legislative research: The last submitter made reference to the papers by Dr. Brisbin, by Dr. Sommerfeld-Stur and by Dr. Nitschke. I’m hoping that legislative research can give us those full publications, plus any subsequent publications, studies, analyses or reports which relied upon them, referred to them, or refuted them. I’d appreciate that. That would be valuable for all of us.

The Chair: Thank you. Your request has been recorded.

Mr. Zimmer: Mr. Chair, what happened to the city of York witness?

The Chair: If we can find the representatives of the city of York, we’ll attempt to call them after the next one here.

NATIONAL CAPITAL COALITION FOR PEOPLE AND DOGS

The Chair: Could you please identify yourself for the purposes of Hansard.

Ms. Candice O’Connell: Yes. My name is Candice O’Connell.

The Chair: Candice, welcome to the committee. You have 15 minutes to make your deputation here this morning. You can use all of it if you wish. If any remains, it will be divided equally among the parties for questions. Please proceed.

Ms. O’Connell: Good morning, Mr. Chair and members of the standing committee on the Legislative Assembly. My name is Candice O’Connell, and on behalf of the National Capital Coalition for People and Dogs, I would like to thank you for the opportunity to submit our presentation on Bill 132.

Today, I am accompanied by Martha Russell, who, in addition to being an NCCPD member, is also the founder and president of A Chance Animal Rescue Inc. Ms. Russell has years of experience in rescuing and rehoming bully breeds, and she can provide this committee with a great deal of factual information and, hopefully, a better understanding of these dogs. Therefore, without further delay, it gives me great pleasure to introduce Martha Russell.

Ms. Martha Russell: Mr. Chair, members of the committee, I operate a registered animal rescue in the province of Ontario. Although we do not refuse any breed of dog, we are known for our experience with American Staffordshire terriers, Staffordshire bull terriers, and the American pit bull terrier, and any of those aforementioned mixes. I will speak globally about these breeds—we’ll refer to them as bull dogs throughout my presentation—and will introduce them to you as a rugged, determined dog who was originally bred as a working dog, not specifically for fighting, as media reports would have the public believe. Sadly, human beings who have the propensity for blood sports and gambling have used these dogs in terrible ways.

I was raised in a family who kept these breeds, and today, my 82-year-old mother shares her home with two bull dogs. Our rescue has operated quietly for over 12 years to date, and in that time we have placed over 40 of these dogs in responsible and loving homes. Our dogs are spayed or neutered, have current vaccinations, and have successfully completed eight weeks of obedience classes before they are offered for adoption. We make home visits, visit two neighbours, and speak directly with the potential adopter’s veterinarian. We have never had any of the bull breeds returned to our rescue or seen evidence of their acting out. We have never had a people-aggressive bull dog come into rescue.

Our dogs come to us via the Ontario Provincial Police, sympathetic animal control shelters, the Ontario Society for the Prevention of Cruelty to Animals, citizens who have found dogs discarded by the sides of roads and in garbage dumpsters, and citizens who have taken dogs from despicable living conditions. Most, if not all, of our rescues are physically abused, not well socialized, distrustful of humans, and yet, the people-friendly trait of the bull breed has always brought them around to be a loving, trusting and loyal animal companion. It is with a

sense of well-being that we see our rescues go on to attain their good citizen awards, work as therapy dogs, as rescue dogs, and as bomb-sniffing dogs with the police services.

We have placed dogs with families with very young children, with older couples who have always had the breed, with professional people, medical personnel and, yes, even lawyers. These are the people you never hear about, as most of us keep a very low profile. You see, these breeds are highly stolen breeds for purposes of illegal dog-fighting and for the short-term purpose of breeding puppies for cash. In each case, they die a long and painful death, and in this province, the cruelty of dog-fighting is only addressed by a small, limited number of police personnel with limited funds being allocated to them and who have limited powers under the Criminal Code of Canada.

I would refer you to the rather graphic photographs attached. They will be upsetting, but you must see what this breed is subjected to, as no other breed is, in the name of sport, and yet has still maintained his want to please and be a companion to humans. But I digress.

The proposed Bill 132 gives police services the power of warrantless searches, entering your home without a search warrant, whether you are home or not, on the complaint of a purported dangerous or menacing dog being inside. That is more power than our police services have under the Controlled Drugs and Substances Act and the gun legislation contained in the Criminal Code of Canada. That should be of concern to each and every one of you. When the dog is seized, it is considered guilty before proven innocent, not what our Charter of Rights and Freedoms allows us as human beings in our courts of law.

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We are not blind to the tragedies that have happened to both adults and children by purported pit bulls. All dogs can bite, all dogs can inflict fatal injuries, but I would suggest three things to this committee. Firstly, in all the media reports—and that is what the present Attorney General is basing his comments on—we have not been made privy in each incident to the photographs of the dogs involved nor their actual breed. We have not all been made privy to the circumstances surrounding the incident as we were not present as onlookers, and we have not been made privy to other dog incidents, such as bites and attacks, by any other breed or breed mixes. As an aside, it has been my observation that in most cases, when hearing the irresponsible owner speak to the press, I'm assured of their inability to own a gerbil. Any square-jawed dog with offset eyes and a mean temperament is noted as a pit bull and makes good press.

Allow me to introduce you to one of our rescues who has survived. Cody is a male American pit bull terrier, approximately eight years old. He was seized at the site of a violent domestic dispute by a rather kind Ontario Provincial Police officer. Cody came between the husband physically assaulting his wife only when the physical aspect was then directed at a seven-year-old child

who tried to intervene. For Cody's attempted intervention, he was beaten about the head with a baseball bat, as introduced in evidence at trial, and Cody was left blind and deaf on the right side of his head, along with massive swelling from the blows. The question, I would suggest to you members is, if Cody is "inherently dangerous," as the present Attorney General has suggested all of the breed is, why does he still like to meet and greet humans? In the alternative, if Cody is so inherently dangerous, how was the husband able to beat him with that bat without being attacked for his efforts? Cody still interacts well with humans, other dogs and loves children. The convicted owner received six months in jail, a fine and presently owns another dog.

My second example of the resiliency of the breed is Puff Daddy. Puff was left at the side of a country road with the left side of his face destroyed by a blunt object, as put by the veterinarian. Puff had numerous pieces of flesh missing from his hind end and legs, has had broken bones in both his front ankles from past injuries and was 30 pounds underweight for his frame, has stubs for teeth, an old injury to his jaw and is blind in one eye. Puff is up to his proper weight, his wounds have healed, leaving large hairless areas, he can walk on his front legs with a strange gait and has become the Wal-Mart greeter in my home as he thinks everyone is there to see him. This is an "inherently dangerous dog" who, according to the present Attorney General in his comments on the proposed legislation, cannot be trusted and is a "ticking time-bomb." This dog has every right to dislike humans and still does not.

When legislation was drafted with stiffer penalties for impaired driving, incidents of impaired driving diminished, as evidenced by reports from RIDE programs and our other police services. Photographs and people involved in collisions speaking publicly have had a huge impact on the way we view drinking and driving today. Legislation must be drafted with stiffer penalties, including jail time and fines, to address the issue of irresponsible owners of dangerous dogs, whatever the breed, banning those owners from owning another dog for life, thus making those owners responsible for the actions of their pets. Eradicating a breed or breeds will only encourage those irresponsible folks who wish to own a dog, for whatever nefarious purpose, to turn to breeds without the history of the American Staffordshire terrier, the Staffordshire bull terrier and the American pit bull terrier, and will open up our province to bigger and more powerful-jawed dogs living among Ontarians with no need for human companionship and thus no wish to please or obey.

Those owners of truly dangerous dogs of any breed will escape punishment because their breed is not targeted by this legislation and therefore is believed safe. What message is given to abusive and irresponsible individuals when only the dogs pay the price for their actions?

This proposed Bill 132 has already created a moral frenzy. People are being accosted for simply walking

these breeds, yet not one of the dogs with their owners has become aggressive or protective; puppies are being thrown in dumpsters in plastic bags; people are dropping off pets at shelters as they cannot comply with restrictions; insurance companies are refusing to insure owners of these breeds, and rescues groups that have dogs with those square jaws and big heads will be unable to prove their dogs are not "pit bulls" as defined by the proposed bill and will not be able to offer those dogs for adoption. It will impact on the family who has no registration papers for their beloved family dog, yet who are responsible owners.

I would also bring to your attention that since Bill 132 was introduced, many media reports of supposed pit bull attacks have made front page news and television coverage, and yet days later, when the culprit is found not to be a pit bull or any mix thereof, there appears to be no media coverage on that issue.

I would urge you to draft legislation that addresses the irresponsible owner of dangerous dogs of any breed or breed mix. Remember, any dog can be dangerous. Do not condemn a magnificent breed of dog whose sole purpose in life is to try very hard to please his master, because most times his master is good, but sometimes his master is bad.

The Chair: Thank you very much. We have about two minutes, and that would allow perhaps one question from the PC caucus.

Mrs. Munro: Thank you very much for being here today to give us your perspective on this. I can assume that you would obviously support some form of dangerous dog legislation that's not breed-specific. Is that a fair assumption?

Ms. Russell: Most definitely.

Mrs. Munro: I ask you that because I have introduced a private member's bill which would define severe physical injury. Obviously it has nothing to do with what the dog looks like; it has everything to do with what the dog does unprovoked. By the way, the conviction is, of course, on the owner and allows the court to consider a ban on ownership, because over and over again we've heard that the same individual can turn around and find another dog.

On page 5, where you talk about the danger that you see this piece of legislation opening up the province to bigger and more powerfully jawed dogs, I wonder if you could give us a sense of just how serious a possibility—a reality, I would argue—this kind of comment represents. What do we have around the corner, in terms of bigger, meaner breeds or the kinds of experiences in other jurisdictions where breed-specific legislation has clearly not worked?

Ms. Russell: You're certainly not asking me to name a breed so that I show a bias there, are you?

Mrs. Munro: No, but perhaps you could give us a sense that there's a reality of that opportunity for people.

Ms. Russell: Of course there is. I think people who have these breeds that this bill is supposedly addressing, the people who have them who aren't responsible—and

whatever the breed and its dangers—are simply going to discard that breed. It's of no consequence to them to get rid of it and pick or choose another breed from another country that doesn't have the history of the bull breeds, doesn't have that want of being with people—and I know you're a Staffordshire bull owner. There are dogs out there with jaws that are unforgiving and more powerful than we know, and those particular dogs were not bred for any human companionship. I think it's a very real possibility, and it frightens me because you and I won't recognize them while walking down the street; and if the same type of person owns them that now owns a dangerous dog and is not in control of the dangerous dog, how in control of that new dog is he going to be?

The Chair: Thank you very much for your submission, and Mrs. Munro, for your question. That concludes your time.

Asking one more time, is a representative of the city of York here? Seeing none, I ask Mr. Peter Orphanos to come forward.

Mr. Kormos: Chair, to legislative research: Part of the material that was presented to us by the last submitter included a pamphlet which has a quote from canine researcher James Serpell, University of Pennsylvania, and canine researcher Cornelia Wagner, University of Wisconsin—Madison. I'd appreciate those documents that the quotes are from. As well, there's a reference to the BBC, presumably British Broadcasting, reporting a 25% increase in the number of hospitalizations due to dog bites since a ban on pit bulls was implemented in England. If we could perhaps track that down, because I noticed the quote very carefully uses "hospitalizations." So let's find out the difference between the rate of hospitalization versus the rate of de facto dog bites since the ban on pit bulls implemented in England. Several US states have passed laws making it illegal for any municipality to pass breed-specific legislation. Perhaps a run-down of those states and, if we could, something of a précis of the arguments that supported the passage of that legislation.

The Chair: Legislative research has recorded your request.

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PETER ORPHANOS

The Chair: Welcome to the committee. For the purposes of Hansard, please state your name. You have 10 minutes, which you can use in whole or in part. If any part remains, that will be divided among the parties for questions.

Mr. Peter Orphanos: Thank you. My name is Peter Orphanos and I come here as a victim of a pit bull attack. I thank you first of all for giving us the opportunity to address you.

Certainly, it seems that I am in the minority this morning in terms of addressees. One specific reason for that problem is that the lobby group for pit bull owners and canine units and so forth is organized. We are not organ-

ized. I don't see a victims' association here of any sort that we can organize. So if you see a lot of people back here, it's because they're organized and we're not.

However, the amount of attacks that I've seen in the newspapers, and even yesterday in the Sun about a four-year-old, leads me to believe that there have been too many of these attacks. Something has to happen. I do believe that government is being responsible in responding to too many attacks lately. To leave that unaddressed is irresponsible and open to litigation.

In my particular experience, a couple of years ago, I was walking my lab down the street and there was a pit bull terrier across the street. I know it was a pit bull terrier because it was confirmed later on, after the bite. The owner was holding it by the collar and the thing was squirming uncontrollably. I told my wife, "There's something wrong with that dog. Let's walk by more quickly here."

We walked by and then, about a block later, I see this pit bull coming behind us, running full tilt. I said, "Uh-oh. We've got a problem here." It stepped right up to my dog, took a couple of sniffs and grabbed it right by the jugular and proceeded to kill my dog.

That dog knew what it was doing. Anybody here who says that dogs instinctively don't know how to kill should have seen that dog that day. I hear a lot of research pro and con. These pit bulls do have a predisposition to attacking and going for the jugular, locking in and killing. If you need any proof in research, I've experienced it.

The pit bull owner came afterwards, about a minute and a half later, having lost control of the dog and the dog having come up to me, and he couldn't get the dog off. Luckily, I once read that if you hit a pit bull on the edge of the nose with a fist, after 12 times, it gets disoriented a bit. It let go and my dog was freed. Otherwise it would have been killed. That was done at the last moment as my dog was starting to lose consciousness. I don't give this to you as schmaltz. This is reality.

Then the delay in getting help; as a victim, I went through the city, the police and so forth. I know the next presenter is the city of Mississauga. I dealt with Mr. Du Rose and I asked that the dog be muzzled. Nothing happened. Two weeks later, I saw the same dog with its owner walking by, smiling away, about a couple blocks from my house. It doesn't work. The present system does not work. I discussed the system with Mr. Rose and he said, "Well, you know what? Education and awareness really help, and that's what our theory and our approach is in Mississauga." It does not work.

I went through a lot of things, including signing forms for court, which never came about. After about six months of me being involved as a victim, doing far more than the perpetrator, I was told that it would not go to court. Then I never heard from them after that.

I have his paper over here—by the way, you check into most animal shelters and you'll see a lot of pit bulls. I was at the animal shelter in Mississauga, and a lot of them, if not most, were pit bulls. Why? Because these

dogs become, with their dispositions, to the point where owners do not want them any more.

In a perfect world, if you can have a perfect world, you can have non-breed-specific legislation and it will work. Dr. Coren stated that with training and so forth, and afterwards with socializing, yes, that would work, in a perfect world. This is not a perfect world. We go by results; we go by what has happened. We have to do something to respond to that.

A lot of people have stated that in other parts of the world, such as in England, legislation has really not worked and so forth. From the Internet, I have seven pages of other municipalities throughout the world that have banned pit bulls. If all of them have not worked, why are they still in effect?

Something has to be done over here. I was a vice-principal at a public school before I retired a year and a half ago, and when it comes to safe playground equipment, and one piece of the equipment is causing a lot of accidents, we try to take a look at what the cause is. But if it keeps on repeating, I could be held liable and that piece of equipment has to be removed. Education for the kids is not enough sometimes; the piece of equipment has to be removed.

I did hear some people saying that there won't be compliance. Let me tell you, as a citizen looking after my own safety, I will be the first person to tell on the pit bull owner to the authorities in my neighbourhood. If everyone does neighbourhood watch on this, the enforcement is going to be a lot easier because the public at large supports you, let me tell you that.

The Chair: As a reminder, Mr. Orphanos, you have a little less than two minutes.

Mr. Orphanos: Two minutes left? Time goes quickly. The last thing I want to say is this: The victims are in the minority today, but when I saw the dog and its breed and how it reacted to my dog and to me that day, no one can tell me that this dog is not any different than any other dog. It is different. You might fine-tune the legislation that you have to be more specific about what types of dogs, so there's less confusion, but it's time to act on this specific breed. The results, in spite of the research that I've heard, are too many bites.

It would be irresponsible of the government not to react with a ban of this sort. It is reasonable. It grandfather everything. No one's going to lose a dog. But presently, because of too many pit bulls in animal shelters, other dogs are being euthanized because there's no room. It's the reverse of the theory that the lady said previously.

As a victim, I want to say, face reality and forget the theories that we've heard here.

The Chair: Thank you very much, Mr. Orphanos. That concludes your time almost to the second.

CITY OF MISSISSAUGA

The Chair: I'd like to call the city of Mississauga's Elaine Buckstein. Please have a seat just about anywhere.

Welcome to the committee this morning. For the purposes of Hansard, please state your name. You have 15 minutes for your deputation. You can use it in whole or in part. If you leave any time remaining, it'll be divided equally among the parties for questions. The floor is yours.

Ms. Elaine Buckstein: Thank you very much. Good morning, everyone. My name is Elaine Buckstein. I'm the director of bylaw enforcement for the city of Mississauga. Part of that responsibility includes animal services.

The background to the development of Bill 132 spans far earlier than the vicious dog bite attack in Toronto of last August. The child fatality inquest into the tragic death of eight-year-old Courtney Trempe provided a compelling model for all levels of government and animal service agencies. The coroner's jury in the 1999 case made several recommendations to enhance and increase the number of education strategies targeting younger children to prevent vicious dog attacks and dog bites, rather than placing an outright ban on a particular breed of dangerous dogs. Indeed, time and time again, it has been noted by municipalities, animal welfare professionals and experts that improved public education exercises are successful in reducing dog bite attacks.

1130

On December 14, 2004, the city of Mississauga council passed a resolution that it is the city's position that breed-specific bans are not an effective measure to prevent dog bites or, indeed, to protect the public from vicious dogs. There are particular difficulties in attempting to legislate a breed which is difficult to define. The city is in favour of promoting responsible ownership and passing legislation that targets those people who have proven to be irresponsible breeders or owners by introducing tougher legislation against them, but not specifically against a breed. In our experience, dog bites are not the sole domain of one breed, and pit bull charges are not the city's only offender.

In this regard, the city of Mississauga has implemented measures to educate the public on dog bite issues and target those dogs and their owners who have acted irresponsibly. The issue of breed-specific legislation or dangerous dogs has come before the city of Mississauga's council on at least three previous occasions and has never been supported. Each time, staff has researched and recommended against the introduction of a breed-specific bylaw, and council has adopted those recommendations. It is the city's position that all dogs are potentially dangerous and that this behaviour is not limited to one or a few breeds. To this end, the animal services section has sought and achieved enforcement capabilities for the Dog Owners' Liability Act since 1999, and we've amended our animal services bylaw to allow the manager to issue muzzle orders where applicable for biting dogs. These steps, in combination with continuous publication, have met with satisfaction.

I would like to interrupt my prepared comments to respond to Mr. Orphanos's issue, and indicate that in the particular case that he raised, in fact it does represent a muzzle order. That was issued by our manager of animal

services. It also represents a case where, when the owner of that dog was found in contravention of the muzzle order, a set fine of \$305 was laid for not adhering to the muzzle order. Further, since our authority was granted to issue DOLA charges and we amended our bylaw to include muzzle orders at the same time, we've issued 19 such muzzle orders. Four were for pit bulls or pit bull crosses, four for Rottweilers and two for German shepherd dogs. Others were issued but not in numbers relative to this hearing.

In October of this year, the province introduced Bill 132. If Bill 132 is enacted as proposed, it will have a huge financial impact and resource impact on animal services in our municipality. We have reviewed the proposed legislation in detail with Mississauga council and would like to identify the potential issues staff could experience in its practical enforcement. There are two main issues at stake with the introduction of this bill, including liability issues arising from municipalities in enforcing the proposed revision to DOLA and limited staff and monetary resources to implement the legislation without provincial support. I would note that Mayor McCallion's comments were that it was another example of provincial download.

Under the proposed legislation, the onus to enforce the revised act remains primarily on municipal animal shelters services staff. The proposed legislation extends beyond the realm of current financial resources and staff time. It is far-reaching; for example, the identification of pit bulls. The legislation provides for an amendment to the Animals for Research Act, where it provides that the pound-keeper becomes the individual determining whether the pit bull is indeed a pit bull or a restricted pit bull.

Confusion is caused with the public being unfamiliar with dog breeds. This will continue to exhaust the daily operations of animal services when dealing with a deluge of inquiries. There will be a rise in abandoned pit bull dogs, and we expect that a potentially large number will be abandoned, creating sustained and continued overflow in the municipal shelter to the detriment of other dogs that are found as strays.

As well, our staff have identified that euthanasia of otherwise healthy dogs will cause them additional emotional stress. There will also be a high influx of dogs left at animal services shelters while awaiting trial unless the legislation is clarified. We expect additional difficulties in collecting impound fees from owners, specifically where charges may be dismissed. The clarity of the municipalities' ability to collect those fines is unclear.

Animal shelter officers and patrol officers are front-line workers responding to residents' concerns. The provincial government has not indicated whether any additional resources or finances will be allocated to municipal shelters or pounds to effectively enforce the proposed legislation.

We currently maintain nine kennels designated for strays. It is our expectation that a large number of pit bulls may be surrendered to animal services, as owners may not wish to comply with the regulations. In the event this occurs, appropriate surrender fees would be imposed

and staff would notify owners that the dogs would be euthanized. It will be time-consuming when staff members try to place a pit bull dog in a location outside of Ontario, since that is allowed in the legislation. I doubt very much that we'll have much success in doing that and, of course, we'll have no cost recovery in doing so.

Under proposed legislation, fees could accumulate if the wait time for a case in court lengthens. The cumulative effect of abandoned dogs, dogs awaiting trial and dogs being seized in a crowded municipal pound results in dogs becoming kennel crazy and unmanageable. Staff would not be able to exercise all the dogs and, in effect, this would result in an inhumane method of keeping an animal.

The bill provides increased penalties for irresponsible owners. In our experience, court proceedings usually result in far less than the maximum fine being imposed, so program revenues cannot rely on fines imposed or fines collected. To this end, the city suggests that the province amend the bill to have a minimum fine and a maximum fine. The city believes the minimum fine should be \$2,000 for those owners whose dogs are not licensed and an additional \$1,000 if the dog is not licensed at the time of the incident, thereby helping to support municipal licensing efforts. Speaking of licensing, we note the bill is silent as to municipal licensing systems, which it could seek to complement in strengthening this legislation.

The province divests great responsibility to municipalities to implement Bill 132 and govern the ban and restriction of a particular breed. Should the province continue to support this legislation, the city believes that funding should be provided to municipalities over a three-year period to implement the revised legislation in transition.

The bill provides for a 90-day time frame where owners of pit bulls must comply with regulations. It will be difficult, if not impossible, for staff to determine whether a pit bull was actually born between that time frame and when ownership really commenced. In this 90-day period, many owners will need to ensure that they have valid licences, if only to assist in providing evidence of ownership prior to proclamation. I would note too that in licensing in our municipality, and in most, the breed is self-described. So I expect that we will see no recognition of "pit bull" on any future licensing claims, at least, I guess, if people are smart enough to realize that if they say "pit bull" they've just signed a death warrant.

1140

The legislation also provides for an amendment to the Animals for Research Act where it specifies that the pound keeper becomes the individual making the determination. There is reverse onus on the owner to prove it's not a pit bull if it's alleged in court that the dog is not. It's unlikely that an owner will be able to afford DNA tests to determine their dog's breed. In any event, the pound keeper will determine the dog is illegal and destroy it. Liability issues arise here due to potential challenges by way of judicial review for the pound-

keeper's decision. Owners could take the municipality to court for destroying their dog that they later claim is not a pit bull or that their dog was killed prematurely. On examination, it is not clear in the bill whether the dog must be retained at the shelter while awaiting a trial or whether municipal shelters must go ahead and perform the destruction with the pound keeper being given the authority to identify the dog.

If this legislation proceeds, the city recommends that the province provide clarity on the status of a dog awaiting trial, that municipalities are given authority to impound and retain the dog while awaiting trial, and that the court's decision to destroy a dog is final and binding. Any appeal may be filed on the fine itself but not on the disposition of the dog, in order to exempt the municipality from any liability.

If the province determines to continue with breed-ban legislation, knowing the difficulties it will create in attempting to legislate a breed that is difficult to define, municipalities must do their best to determine when a dog is born. The city recommends further that microchipping of all restricted pit bulls would strengthen the proposed legislation by providing a less subjective means of identifying the breed. With the passage of the legislation, automatic microchipping should commence; otherwise, the animal may be found by the pound keeper to be a pit bull breed and destroyed. Further, the city recommends that the province provide municipalities with clear guidelines on their authority to microchip restricted owned pit bull dogs.

The Chair: As a reminder to you, you have a little less than two minutes.

Ms. Buckstein: With the passage of Bill 132, the city's animal services section will be faced with a significant increase in workload, which impacts staff response times and the ability to provide regular services. The section will face pressures on finances, research, resources, the treatment of accused dogs, administration, emotional strain and increased enforcement responsibilities.

The province believes that with the introduction of this legislation, the public will be protected from vicious dogs. The legislation places a significant amount of responsibility on municipalities to enforce the ban and restriction on pit bulls. The city believes that, as the province wishes to divest so much responsibility on municipalities to govern the ban and restriction on this breed, then equally the province should support existing municipal programs and provide municipalities with the resources for such proactive measures, the financial assistance with which the municipality can realistically enforce the proposed changes, require microchips for all restricted pit bulls, and exempt municipalities from potential liability arising from owner claims.

I would also note that the current Municipal Act does allow municipalities to respond to situations within its own boundary regarding dangerous dogs.

The Chair: Could you please sum up? Your time has pretty much expired now.

Ms. Buckstein: Yes. This legislation does remove that option, and it is of concern to us. Instead, we would suggest that the committee review and act upon the 33 recommendations of the jury into the death of Courtney Trempe.

The Chair: Thank you very much. Unfortunately, we don't have time—

Mr. Zimmer: I have a question.

The Chair: Unfortunately, we don't have time for questions on this deputation. If we did, Mr. Zimmer, the rotation would begin with Mr. Kormos. I'm sorry.

Mr. McMeekin: Mr. Chairman, with respect, can we get a copy of the presentation from the presenter?

Ms. Buckstein: Yes, Mr. Chairman. I do have copies of the presentation and the report that was put before Mississauga city council.

The Chair: Thank you. The clerk's office will circulate that.

ASSOCIATION OF ANIMAL SHELTER ADMINISTRATORS OF ONTARIO

The Chair: Our final presentation for this morning is the Association of Animal Shelter Administrators of Ontario, Christine Hartig. Is Christine in the room? I understand you need a moment to set up the projector.

Ms. Christine Hartig: We're going to forgo that.

The Chair: OK.

Mr. Kormos: Chair, while these people are seating themselves, may I ask legislative research: Once again we heard reference to the DNA-ing of dogs, the concern from the city of Mississauga. Other reference earlier was made to the fact that a dog's breed cannot be scientifically proven through DNA. Again, I don't know. Can we get research to give us some authoritative, scientific information on whether or not there are tests which can indicate the breed of the dog, whether it's DNA or what?

Similarly, are there factors like—you're too young, Chair, but others will recall the double-Y chromosome as a factor in humans, for males, for high levels of aggressiveness. Are there similar biological phenomena in animals which can predispose an animal to higher levels of aggressiveness, regardless of its breed? I make specific reference to the double-Y chromosome in male humans. Are there similar indicia in dogs?

The Chair: Legislative research has recorded the request. Mr. Kormos understands that flattery will get him everywhere.

Would you please, for the purposes of Hansard, begin by stating your names? You have approximately 12 minutes for this deputation. Proceed when you're ready.

Ms. Hartig: I have 12 minutes?

The Chair: Yes. That'll take you till noon.

Ms. Hartig: I'm Christine Hartig, president of the Association of Animal Shelter Administrators—

Mr. Kormos: I'm seeking unanimous consent for this group to have 15 minutes. I am prepared to stay till 12:03.

The Chair: Is there unanimous consent?

You have 15 minutes for your presentation. Please proceed.

Ms. Hartig: Thank you. I'll state my name again. It's Christine Hartig, president of the Association of Animal Shelter Administrators. To my left is Fiona Venedam, on the board of directors. To my far left is Carl Bandow, treasurer, and on my right is Don Mitton, past president.

Good morning Mr. Chair, committee members, staff and fellow speakers. Thank you for the opportunity to address the committee with respect to Bill 132, a matter of mutual interest which will impact hundreds of thousands of Ontarians: dog owners, breeders, law enforcers, animal shelter administrators and many others. I am before you today primarily as the president of the Association of Animal Shelter Administrators of Ontario. That's quite a mouthful. I'll refer to it as the AASAO after now.

In order to establish some context as to our approach on the proposed legislation, I'll start by providing some background information about our organization. Established in 1981, the AASAO is dedicated to the promotion of a professional approach to the management of private and governmental animal care and control agencies, and exists to serve and assist such organizations. The AASAO has representation from organizations across Ontario, including the largest municipalities in the province. That would include the last speaker from the city of Mississauga. Our membership represents hundreds of years of combined experience and expertise in the business of animal care and control, including the development of associated regulations as well as the administration and enforcement thereof. We're a lot older than we look.

We maintain working relationships with numerous other organizations in Ontario and beyond which have an animal-related mandate, including but not limited to the Ontario Society for the Prevention of Cruelty to Animals, the Ontario Veterinary Medical Association and the Canadian Kennel Club. Interestingly, our very existence was precipitated by a provincial initiative in the 1980s related to the Dog Owners' Liability Act. By the way, our members work for organizations that are responsible for the enforcement of that act.

We have since that time also worked closely with other provincial ministries, such as the Ontario Ministry of Agriculture and Food, on a number of initiatives affecting our industry as well as the general public. Over the years, we have enjoyed many co-operative training initiatives and a special working relationship with OMAF, which looks upon the AASAO and its members as the experts in the field of animal care and control. In fact, we were recently asked by OMAF to review and provide input on its proposed Animals for Research Act Compliance Manual for Animal Control Agencies and to participate on its euthanasia and Animals for Research Act advisory committee.

I wish to assure you that the AASAO shares the concerns of the province with respect to addressing dog bites and attacks and the problems associated with

dangerous dogs, which the proposed bill endeavours to do. There are, however, a number of issues related to certain aspects of the proposed legislation which will make it very difficult, if not almost impossible, to achieve that objective, hence reducing the legislation's efficacy. The following summarizes a few of those issues and provides some alternative solutions. Given the time constraints, we would be happy to provide more detail at a later date.

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On the topic of breed-specificity, the reality is—and you've heard this from other speakers earlier—any dog, purebred or mixed, of any type can bite. Singling out a particular breed through a ban such as that proposed is both over-inclusive and under-inclusive; that is, many well-behaved dogs among the banned breeds are included and many poorly behaved dogs from other breeds are excluded. Any legislation should be based on behaviour of the animal, not the breed, and the essential element in this is owner responsibility.

A breed ban is difficult to enforce, especially with the so-called "pit bull," as it is very difficult to determine if the dog belongs to a certain breed, particularly for a crossbreed. Defining a pit bull has proved to be a formidable legal hurdle in court cases because the pit bull is not a specific breed; rather, it is a kind of dog, a generic catch-all like "hound" or "retriever." The breeds most commonly referred to as pit bulls are the American Staffordshire terrier and the American pit bull terrier. However, since some owners refer to them as "bulldogs," this often leads the public to confuse them with the pug-faced, bowlegged English bulldog, a distant relative, or the bull terrier, another relation whose bloodline was softened long ago by crossbreeding with the English terrier. Pit bulls come in almost any colour. Their ears may be cropped or not, their noses either red or black. Their height and weight are proportionate, with the weight parameters ranging from less than 10 kilograms upwards to 50 kilograms.

Based on the foregoing, there are many dogs that have, quoting from Section 1(2)(e) of the bill, "an appearance and physical characteristics that are substantially similar to" the breeds identified by the bill. Those dogs may be of entirely different breeds not at all related to the pit bull, and may wrongfully become subject to prohibitions and other controls outlined by legislation. The bill also places the burden of proof on the dog owner who, in most cases, will not have the ability to prove otherwise. By extrapolation, a significant and undue burden is also placed on animal care and control personnel tasked to administer and enforce this aspect of the legislation.

In addition to the foregoing, there are a number of concerns with respect to certain terminology used in the bill; e.g., the word "menacing." It is essential that the province consider conferring with animal care and control service providers, such as those we represent, when creating definitions under the new act.

Other impacts on agencies providing animal care and control services: We would request that consideration be given to the significant impact on resources that would be required to enforce the proposed legislation and provide sheltering of pit bulls impounded under such legislation.

The previous speaker covered a number of the concerns that we share. I'll just give you a few statistics here. Although a census has never been conducted to determine the number of pets in Ontario, data published in the AASAO journal estimated that approximately 30% of Ontario's households own a dog. Pets in Ontario, published by the OVMA, estimated that 50% of households own a dog and/or a cat. Stats Canada reports that there were 4.49 million households in Ontario in 1999. It can therefore be extrapolated that 1.35 million households own at least one dog. A survey of animal care and control and humane society professionals estimates that, conservatively, 1% to 2% of the dog population would be comprised of the breeds identified in the proposed legislation, resulting in approximately 15,000 to 20,000 restricted animals.

Funding for animal care and control service providers has historically been significantly below that required to meet the current day-to-day demands. Other than in unorganized territories, funding for animal care and control services is largely the responsibility of municipalities, which are limited in their abilities to generate revenues. Although the proposed legislation speaks to increased fines, the maximum fines in the current Dog Owners' Liability Act are very rarely levied and, in most cases, those funds are not received by the agency providing the enforcement. Increasing fines will have little or no impact on the cost of resources for enforcement delivery.

In addition to the aforementioned breed-specificity aspect of the proposed legislation, several other aspects will seriously impact on its enforcement and efficacy. The breed-specific aspect of the legislation will also result in inconsistent enforcement province-wide, given varying levels of expertise for breed identification and of the ability to respond. Areas of the province where the ability to respond and enforce the legislation is less than others will likely be the subject of an influx of restricted dogs.

Animal care and control service providers generally provide kennelling for dogs, while action under the DOLA is proceeding through the courts. Due to the lengthy process for hearings under the act and appeal processes, dogs are often housed for periods in excess of one year. As there is no aspect of the legislation which speaks to the streamlining of this process, it is anticipated that many animal shelters will fill with pit bulls, resulting in significant cost increases and possible shelter expansion requirements, as well as potential conflict with cruelty legislation as it relates to housing animals for long periods of time without socialization etc. Animal shelters will also be impacted by an increase in dogs being surrendered by their owners and seized under the legislation.

The legislation provides for an amendment to the Animals for Research Act, in which it specifies that the

pound keeper becomes the individual determining whether or not a dog is indeed a pit bull or a restricted pit bull. In addition, the legislation places reverse onus on the owner to provide proof that his or her dog is not a pit bull if it is alleged that the dog is in fact one. An owner may not be able to afford the DNA tests to determine his or her dog's breed. In this event, the pound keeper will deem the dog as illegal and destroy it. The previous speaker addressed the liability issues associated with that.

Provincial animal care and control service providers are under-resourced. Field services barely meet the minimal acceptable response times, and proactive programs, such as patrolling parks and educational initiatives, are limited or non-existent. Animal-related issues are a low priority for police services unless there is an immediate threat to public safety, and then they require assistance from the local agency providing animal control services.

The provincial court system and the prosecutor's office have historically been unable to process hearings, whether performed by the crown or municipal legal departments, in a timely fashion. Increases in those resources will be required to process the increased caseload resulting from the implementation of the legislation.

Due to the lack of enforcement resources, the licensing and identification of dogs in the province has had limited effectiveness to date. Estimates of the percentage of dogs registered rarely exceed 25% of the population. Differential fee structures, in part intended to increase revenues to offset enforcement costs, do not meet that objective.

Now what you wanted to hear most: a summary of our recommended alternatives.

Placing greater emphasis on responsible dog ownership is considered a more effective approach to addressing dog bites and attacks and the problems associated with dangerous dogs. We recommend the following as alternatives for consideration, which can be taken in combination as part of an overall prevention and action program.

Rather than prohibiting certain breeds of dogs altogether, introduce legislation to regulate dangerous dogs and potentially dangerous dogs, which are defined as dogs that have bitten or attacked a person or domestic animal and dogs which by their training or purpose have a greater potential to bite or attack, respectively. Higher licence fees and mandatory liability insurance requirements for dogs that bite or attack should be considered.

Require that any dog owner who permits or encourages his or her dog to attack or bite a person or domestic animal without provocation be subject to substantial fines and/or criminal charges as appropriate.

Require that any dog which has been proven to have bitten a human or domestic animal be subject to muzzling and effective control when off the property of the owner and to effective control when on its own property and that the owner be subject to prosecution under the appropriate municipal or provincial legislation.

Encourage and fund animal care and control service providers to deliver an aggressive program of public outreach, ideally in co-operation with breed organizations and animal welfare groups, that provides information on appropriate breed selection, dog behaviour and dog handling.

Encourage animal care and control service providers to provide licensing incentives that would encourage dog owners to participate in programs such as obedience training and good canine citizen testing to help integrate their dogs into the community.

Provide schools with resources to teach youngsters how to behave around dogs generally and specifically, how to behave when they're confronted by an aggressive dog.

Establish and maintain a province-wide database whereby information about dogs known to have bitten or shown aggressive behaviour may be tracked. Data collection could be coordinated with human health care professionals in order to assess the severity of bites, attacks, locations, victim types etc. so that appropriate prevention mechanisms can be developed;

Streamline the process under DOLA through which may be obtained a destruction order for a dog that has bitten or attacked, to provide for a more timely resolution.

If the proposed legislation is approved to include pit bulls in the manner that it does currently, amend it to ensure that any regulations regarding the final disposition of pit bulls be applied equally to municipalities, humane societies and contracted services.

Amend the legislation to provide for 100% provincial funding for animal care and control service provider implementation costs related to proposed amendments to DOLA for a three-year transitional period.

In addition, we support all of the recommendations made by the previous speaker.

In the spirit of, among other things, the memorandum of understanding between the province and the municipalities of Ontario to consult on matters of mutual interest, the AASAO and, I'm sure, other organizations such as the OSPCA and the Canadian Kennel Club, with which we have liaised, would be pleased to discuss in greater detail our concerns and proposals and to work with the province to establish effective controls on dangerous dogs through appropriate legislation as well as education and awareness programs.

Thank you for your consideration.

The Chair: We have three minutes remaining for at least one question. Mr. Kormos, you have the lead.

Mr. Kormos: I suppose my concern—because I come from down in Niagara, where municipalities, of course, cope with animal control. So it's not so much to you folks, but you're part and parcel of that community. But to research: Could we please have a cross-section of Ontario? Give us a picture of who does animal control in any number of communities.

For instance, down where I live, in Welland, you're hard-pressed to get an animal control officer out there on

a weekend or in the middle of the night, because of the budgeting. Our local humane society is constantly at odds, doing bake sales and raffles, raising money. Again, we live in a semi-rural area, so we've got a big concern with any number of animals, vicious animals as well as rabid animals—skunks, raccoons—and the impact they have on the municipalities. I wonder if research could get us that.

As well, could research get us the Hansard of the New Brunswick committee hearings, where they rejected breed-specific bans? As I understand it, the Liberals opposed breed-specific bans in New Brunswick. I'd be interested in what they had to say there.

Finally, Chair—and I appreciate that you folks might have an interest in this too—could research acquire for us and catalogue, with synopses, the prevalent academic and scientific research on breed-specific bans in the English language and point us to any that support breed-specific bans? I think every member of the committee would like to see academic or scientific research that supports breed-specific bans.

Finally, I want to tell you folks that down where I come from we've got a real shortage of justices of the peace, and when the spokesperson from Mississauga was here—we've got a crisis in the courts, in JP courts, provincial offences courts, Mr. Zimmer. Huge backlogs. These people are not whistling Dixie when they talk about the logistical problems of storing animals for months and months. You know that. There's a crisis, not just down where I am in Niagara, in the availability of JPs. We haven't had appointments. We haven't got the court space for them. I would appreciate some sense from legislative research, because submissions have been made to the government by senior justices of the peace, by the head JPs—what do you call those people, Mr. Zimmer, the head JPs? You know who I'm talking about.

Mr. Zimmer: This is the longest question I've ever heard.

Mr. Kormos: No, no. Stick around a few more years.

Give us a report on the status of JPs and the requests that have been made of the government in terms of JP shortages here in the province—

The Chair: Thank you very much, Mr. Kormos.

Mr. Kormos: Thank you, Chair. Thank you, folks.

The Chair: That concludes the time we have for our deputation. This committee stands in recess until 1 o'clock sharp.

The committee recessed from 1201 to 1305.

CAROL SELJAK

The Chair: Ladies and gentlemen, welcome back. This is the afternoon session of the standing committee on the Legislative Assembly to consider Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act.

This afternoon, our first deputation comes from Carol Seljak. Is Carol in the room?

Ms. Carol Seljak: Yes.

The Chair: OK, come on up, Carol. Welcome. Make yourself comfortable. Just as a recap, you've got 10 minutes for your deputation. You can use all of it if you wish. If you leave any time remaining, it'll be divided equally among the parties to ask you questions. The floor is yours.

Ms. Seljak: My name is Carol Seljak. I'm speaking on behalf of the Bloor-Dufferin Residents Committee, a group of 200 residents in the Bloor-Dufferin area. The group has worked together on numerous projects over a period of nine years.

I phoned a sample of 40 people to survey their responses to the topic of the pit bull ban. The people I spoke to are opposed to vicious dogs in general. They felt frightened and even terrified by pit bulls. They avoided pit bulls if they were with their pets for fear of an altercation. Their fear about this particular breed was its well-known unpredictability and its ability to lock its jaw on its victim, doing serious damage. Some people were not sure a ban would be sufficient, since there were other dangerous breeds. They felt enforcement would be problematic. Others felt they wanted to get to the bottom of the problem, so resources would be required to deal with the broader issue. People were aware of the argument that the owner was a person who should bear serious responsibility and sanction should the dog attack another dog or person, but these sanctions are meaningless if it is your child who suffers an attack.

As an aunt and a teacher, I cannot imagine a situation where I could not free a child from the grip of a dog until help would arrive 10 to 15 minutes later. I was horrified when I read about the man who was taking two pit bulls for a walk and they turned on him. Nothing neighbours could do would allow the pit bulls to release the man. Officers shot the dog with 14 rounds of ammunition, which finally resulted in the man's release.

I'd like to summarize some of the comments from people after the phone calls I made. Penny C., a dog walker, said that a pit bull attacked her neighbour's dog, resulting in 80 stitches to the dog. She said that the muzzle-and-leash approach would help, but there's no enforcement to ensure adherence to the law. She's in favour of the ban because it sends a clear message rather than an unenforceable one.

Paul T. is a dog breeder, and he said that only certain people should have access to aggressive breeds. He thinks there should be licensing requirements when obtaining certain breeds. He saw a documentary which mentioned the chow as another dangerous breed, but that same documentary had the pit bull on the top of its biggest bite list. The title was earned because of the pit bull's unpredictable and aggressive behaviour. Paul said that he encountered a pit bull owner who froze up when he was approached by Paul and his dog. Another breeder he knows was raising three pit bulls until they turned on him. On one occasion, he encountered an animal control worker who was looking for a pit bull that was involved in an attack. He is in favour of huge fines and criminal charges.

Mike W. acknowledged that he heard a radio program which identified the existence of an underground market for pit bulls and that the owners have dogs wear weights around their collars to build muscle and prepare them for fights. The program further identified 16- to 29-year-old male owners who use the pit bull as a status symbol due to its reputation as a vicious animal. He was in favour of the ban.

Cathy B. said that she was fearful of taking her children to the park because of an experience she had with two young men who had their pit bulls climbing trees. She asked them to move away from the children's play area, and they threatened to command the dogs to attack her. She felt the pit bulls were like a loaded gun in the hands of these owners.

Paula B. is a policy analyst and supports the idea that dogs known to be dangerous should not be off-leash. She said that there will be problems writing the policy, however, due to the identification of pit bulls.

Rick K., a dog breeder, said that the American bull is even more vicious than the pit bull. He said that identifying the breed was problematic and that he was in favour of designated off-leash areas and making the owner responsible. The enforcement would have to be consistent and prevalent, and severe penalties in the form of fines and criminal action would be the consequence.

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Carl H. said that he is torn: He leans toward the law because he's terrified when he sees a pit bull, but he doesn't want to encourage simple banning as a solution.

Alice H. says that she doesn't like pit bulls or any vicious dogs, although she is aware that people are the ones who are irresponsible when there is an attack. She is afraid for the safety of small children, but she's in favour of meaningful process, consequences and resources aimed at resolving the problem.

Gerry H. encountered a pit bull named Dragon, who jumped over a fence that was one metre high and attacked Gerry's dog, Chaucer. The owner apologized and offered to pay the damages, but Gerry was too afraid to approach the house later in the week after Chaucer was sewn up at the vet's. He decided to go through official channels and phoned animal control, but the person wasn't much help so he has just put it off. He provided me with a copy of a letter and his bill. He asked me if our group could sort this out for him. I said I would try, but honestly, I'm hesitant to knock on that door in case Dragon is on the loose.

I phoned Rob M. and he told me his dog used to play with Dragon until Dragon attacked Rob's dog. He said the owner was very apologetic and paid for the damages. Rob witnessed another attack when a pit bull turned on its owner and bit someone else after that, yet he is not in favour of the ban because he does not think banning breeds solves a complicated problem. Many neighbours have complained about Dragon walking his master, yet after at least two attacks Dragon has faced no consequences, while the owners simply keep paying vet bills.

Leanne K. said the owners are being set up against each other because there is this hostility toward all pit bull owners. She witnessed an altercation between two dog owners where one owner was shouting at the other because he had a pit bull, and he accused him of his dog starting the altercation. Intellectually, she can understand the arguments put forward by dog owners, but practically speaking, she and her family fear and stay clear of pit bulls, so she's in favour of the ban.

Tom R. said that there were two pit bulls that were attacking people and dogs outside his home. He ran out to the park and started hitting the dogs with a shovel. He was issued a subpoena. He had to go to court on four separate occasions to deal with this. The dogs were put down and the owner was charged with assault with a deadly weapon. In total, four criminal charges were laid. You can be sure Tom is in favour of the ban.

William E. said he witnessed the incident and the owner waited around for the police to take them away. He was horrified at the random attacks made by the bulls and the total lack of control demonstrated by the owner.

The people I surveyed did not complain to me about encounters with other vicious breeds.

In addition, I lived on Summerhill Avenue beside David Balfour Park for 19 years while growing up. My parents and brother own property there and I've taken my nephew and nieces out to the park twice a week for the last five years. I'd like to speak about my experiences at this park, including Rosehill reservoir, an area avoided by neighbourhood children because of its reputation as a leash-free running area for dogs.

I've talked to Annie S. on Summerhill Avenue, who said that the lower park is better than the Rosehill reservoir, which routinely has 30 dogs or more running off-leash. The problem is that dog owners pass through the lower park with their dogs off-leash. Annie has reported that dog walkers with up to seven dogs on leashes do not clean up after their dogs, and she wonders at the control they might have with so many dogs on several leashes. As a result, almost every walk to the park results in her children stepping in dog excrement.

Jennifer S. on Summerhill Avenue complained that her two children have been charged by dogs on three separate occasions. Each time owners exclaim, "This is the first time my dog has ever done anything like that."

Tony M., a grandfather, was terrified due to an incident that happened when he was walking his six-year-old grandson. The boy, frightened by a large, fast-approaching dog, turned to run because he was afraid. As a result, the dog knocked him down forcefully. Tony M. felt helpless in attempting to protect the shaken boy. An apology after the fact did not make one bit of difference. Now when Tony takes his grandson to the park, he makes sure the boy does not run, does not play with a ball, and freezes when a dog goes by, just in the interest of safety.

The Chair: Carol, you have just a little under two minutes left.

Ms. Seljak: Great.

The problem with the Rosehill reservoir is that it's well known as a running area for dogs. I talked to

Rachel Z.'s daughter, who is seven years old, and she said that she loved dogs. I asked her if she had ever been to the Rosehill reservoir, a large green space nearby, and she said she had not. Her mother said that it was not safe because this was an off-leash dog area.

I believe the Summerhill situation relates to the pit bull ban because the emphasis on enforcement and penalties promoted by organizations like the Canadian Kennel Club avoids the issue. A pit bull ban will result in fewer serious attacks made by these dogs. Pit bulls have been identified as a problem in many cities and provinces. It isn't a breed that's been pulled out of a hat. The people I spoke to from Summerhill and Dufferin Grove Park are just tired of having to watch their children so closely in case an off-leash dog charges. At least let's eliminate the possibility that the charging dog is a pit bull that is practically impossible to fight off.

I respectfully request that this committee consider other remedies to this problem and to begin this process by issuing a ban on pit bulls, to ensure greater care among dog owners to alleviate the fears of people who would like to use the parks and to reduce and prevent any more serious accidents.

In addition, I have the report from Dr. David McKeown to the board of health, the subject being the preventing of vicious dog attacks in Toronto. It's a Toronto staff report written January 5—

The Chair: I have to stop you there. Your time has expired. You're welcome to table the report with the committee clerk if you wish to have it circulated.

Ms. Seljak: Sure. Thank you very much for your time.

The Chair: You're welcome. Unfortunately, there won't be the opportunity to ask questions.

Is Cheryl Smith in the room?

Ms. Cheryl Smith: Yes.

Mr. Kormos: Chair, while this woman is sitting down, may I ask legislative research if he would please give us an outline of some significant jurisdictions, if any, that have muzzle laws that require a dog—any dog, I presume—to be muzzled when it's in public. I'm not sure whether it's a cultural thing or a statutory thing, but I know in some places in Europe you tend to see dogs with muzzles in a way that you don't here. And if he can give us any data that they have pre-muzzling/post-muzzling in terms of the incidence of attacks. I'm loath, as you know, Chair, to submit to muzzling here at Queen's Park. I've fought it for 16 years.

The Chair: Perish the thought that we should ever have muzzling at Queen's Park, Mr. Kormos.

Mr. Kormos: It's obviously being contemplated by some for dogs.

Mr. McMeekin: Just quickly, Mr. Kormos also made a request earlier, and I'm loath to be counting and reporting back skunks per municipality. I think he asked the research team to do that.

The Chair: The issue of skunks in the current hearing is very much out of order. Thank you.

CHERYL SMITH

The Chair: Ms. Smith, you have 10 minutes for your deputation. You can use all of it or part of it, as you wish. Please go ahead.

Ms. Cheryl Smith: Thank you very much, honourable members. I thank you for the opportunity to speak to you with respect to Bill 132. As a Canadian and a lifelong resident of this province, I value those principles of peace, order and good government. Good government requires the good formulation of good public policy: policy that is developed as a result of sober and objective analysis; policy that is not driven by sensationalist media; policy that is not generated by myth and emotion; policy that is not driven by a climate of fear.

Bill 132, in its current state, is an example of legislation that I feel is not good public policy. I refer specifically to the clauses pertaining to the banning of pit bulls and other dogs in that category. Please use this bill to place the onus for public safety on the owner, not the dog.

Since my area of expertise deals with dog behaviour, I will try to address my remarks primarily in that order. I would also note that when I give a seminar in other locations, I'm usually given two days to speak, so I'll try and make this 10 minutes.

Mr. Kormos: You too?

Ms. Cheryl Smith: Yes.

I have included a copy of my qualifications in the folder so that you may review it at your leisure. In addition to over 20 years of experience as a school teacher and human resources manager, for the past 13 years I have been involved in dog behaviour and dog training on a full-time basis. The majority of my time is spent working with dog owners whose dogs are displaying inappropriate behaviour, primarily what we like to describe as aggressive. On the average, I deal with approximately six to 10 dogs on a private basis per week. Over 13 years, that's approximately 4,500 to 6,000 dogs, primarily exhibiting behaviour problems. This does not include dogs that I interact with in group classes, including behaviour modification classes dealing with inter-dog or dog-human aggressive behaviour.

In my experience, there is no breed with a monopoly on inappropriate, aggressive behaviour. There is, however, a lot of misinformation and ignorance about dog behaviour that permeates the public perception. It is human nature to judge events either with rose-coloured glasses or a jaundiced eye, depending upon whether or not we like the participants. We do the same thing when observing dogs interacting with the public. Bites from breeds you like or deem friendly become nips, while the same bites from breeds you don't like or fear become vicious attacks.

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We have few, if any, objective standards with which to measure the severity of the behaviour. While the current law defines a bite as a puncture or tearing of the skin, I would like to offer a more comprehensive

definition of the nature of a bite as developed by Dr. Ian Dunbar, and I'm including an attachment in your folder here. At the very least, I would ask that the following bite levels be a part of any education program to better prepare dog owners for true understanding of their dog's jaws' capability. I also include a comparison of comparable human behaviour to provide a perspective for risk assessment. Many owners are unaware of the onset of inappropriate behaviour because they do not understand the warning signs. Dogs have tremendous ability to control the pressure of their mouths. They actually have six levels of bites, which I will briefly review.

A level 1 bite is actually a snap with no contact. That is an intentional miss, because a dog's jaws are five times faster than the human hand. You cannot pull back from an unrestrained dog to miss a bite. This is equivalent to verbal harassment from a human: a human shouting, "Leave me alone," slamming the door in your face or continuing.

A level 2 bite is a single bite with enough pressure to cause bruising or a scrape when pulled away. It is an intentional contact, but the dog is still exhibiting bite inhibition. The human equivalent behaviour would be a human shouting, "Leave me alone," and pushing and shoving; you might fall down, so there are certainly various degrees of pushing and shoving.

Level 3 is a single bite with one to four punctures that may be up to half the depth of the canine tooth. There could be tears when the dog pulls away. This is intentional contact with severe pressure. This, to me, is equivalent of a human shouting in your face and punching you, so there may be minor or more severe injury.

A level 4 bite is one to four punctures deeper than the length of the canine tooth, which means that the dog holds on, exerts pressure, and there would be possibly a shake in both directions from the direction of the puncture. This, to me, becomes aggravated assault. This is using a weapon for causing serious injury.

Level 5 is a multiple bite with deep punctures causing mutilation, intentional contact with excessive pressure: a human shouting, using a weapon, causing serious to life-threatening injury.

Level 6 is a dog that has killed a victim, either animal or human and/or consumed the flesh. Many humans also exhibit level 6.

I would also like to say to members of the committee and those observing in the room, if you have siblings, I could safely assume that you're probably at least a level 2 biter. Many of us, including myself as a child, are a level 3, but I have been successfully retrained and rehabilitated.

There are frequent statements about pounds of pressure per square inch attributed to various breeds and a pit bull's locking jaw. These are as erroneous as the so-called alpha hierarchy that we cling to so tenaciously. I am very respectful of the capacity of a dog's jaws to inflict serious damage, and certainly the larger the jaw, the more potential to deliver more damage. There is perhaps a corollary to that maxim that might bear consider-

ation. If you are assigning a higher element of risk to certain breeds according to their capability of inflicting damage, then perhaps you might give more credit for not inflicting damage.

There is also the perception that dogs that bite or fight with other dogs represent a higher danger to humans, especially children. That is also erroneous. Inter-dog aggression is not an indicator of dog/human interaction or vice versa. Many dogs that bite humans never bite another dog. The converse is also true: Many dogs that fight with other dogs never bite a human.

Pit bulls are, by breed definition, designed to be very gregarious and easy to socialize with humans. You should bear this in mind. Should you restrict them, the irresponsible owners you target are simply going to attach themselves to a different breed that is infinitely harder to socialize to humans.

The Chair: Cheryl, you have about two and a half minutes remaining.

Ms. Cheryl Smith: All right.

The higher arousal level with other dogs is something that needs to be addressed. I do not want you to think that I am in favour of allowing dogs to bite without consequence; I am not. I am as appalled as the next person when I read of the incidents that are essentially tragedies. The worst part of these tragedies is that they are, for the most part, the result of human error and entirely preventable. Education and other measures that encourage and reward responsible ownership are far better ways to protect the public.

If you need an example of the ability of an educated public effecting good social change, look no further than the area of alcohol-related driving fatalities. We now have greater social awareness of the tragic consequences, and drinking while driving is no longer considered a rite of passage. It is a good thing. In Ontario, between 1988 and 2001, alcohol-related fatalities dropped from 439 to 204. That's the power of changing social consciousness.

I would also ask you this: Since 87.5%—of almost nine out of 10—drivers in alcohol-related fatalities are men, should we not ban all men from drinking? We recognize the absurdity of this notion. Instead, we rightly address our attention to the appropriate offender: the drinking driver. So let Bill 132 address its attention to the appropriate offender: the irresponsible owner who does not properly socialize or train his dog.

The Chair: Cheryl, thank you. You've used up your 10 minutes. Unfortunately, there isn't the opportunity to ask you any questions, but thank you very much for your deputation today.

Ms. Cheryl Smith: That's fine. The remainder is included in my brief.

Mr. Kormos: Chair, if I may, while these people are seating themselves, Ms. Smith presented this hierarchy of dog bites, these six categories. I don't know whether that's her own analysis or whether that's a universally accepted one, but I'm wondering if legislative research can get us more information on these six categories of dog bites and, more importantly, what they reflect or

represent; in other words, what the dog is doing when the dog is engaging in a level 1 versus a level 6 bite. For instance, this morning, the attack we heard of was certainly a level 4 or 5, with that seizing and shaking. So if there is broad-based, accessible information with that type of analysis, I think it would be helpful for us to have that, and Ms. Smith may be of assistance to research.

The Chair: Thank you. Legislative research has recorded the request.

ONTARIO VETERINARY MEDICAL ASSOCIATION

The Chair: Our next deputation is from the Ontario Veterinary Medical Association, Dr. Tim Zaharchuk and Doug Raven. Are they here?

Gentlemen, welcome this afternoon.

Dr. Tim Zaharchuk: Good afternoon, ladies and gentlemen. Thank you very much for allowing us the opportunity to speak to you today.

The Chair: Before you start, please state your names for the purposes of Hansard.

Dr. Zaharchuk: That was what I was going to do next. I am Dr. Tim Zaharchuk, the current president of the Ontario Veterinary Medical Association, and also a private practitioner in the city of Brampton. To my left is Mr. Doug Raven, who is the executive director of the Ontario Veterinary Medical Association.

On behalf of the Ontario Veterinary Medical Association, I'd like to thank the committee for the opportunity to present the association's views on this important issue. OVMA is a voluntary, non-profit organization representing Ontario's 3,000 licensed veterinarians. Our members are experts in animal physiology and behaviour. This expertise has been acquired through completion of a rigorous university curriculum and years of hands-on experience.

Veterinarians are trained to take a science-based approach to any issue, including aggressive behaviour by dogs toward humans or other animals. As such, OVMA has conducted a thorough review of the available research on dog bites and the use of breed-based bans to curb dog attacks. Based on that review, we are here today with three simple messages.

First, breed-based dog bans are not an effective way to reduce the frequency of dog attacks.

Second, a breed ban would have a number of serious negative consequences for affected animals, their owners and the general public.

Finally, it would be possible through the appropriate use of licensing, deterrents and education to significantly reduce the number of dog bites by all breeds in Ontario.

Let me now address those three points in turn.

Why are breed-based bans ineffective? It is because they are based on two simple but incorrect assumptions: (1) that only certain breeds of dogs are dangerous, and (2) that all dogs that belong to those breeds are dangerous. Available data do not support either of these two assumptions.

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A 1996 study by James Badow, general manager of the animal control services for the city of Toronto at the time, found that dog bites in the city were reported for more than 20 breeds and crossbreeds. Pit bull terriers accounted for only 4% of reported bites and ranked ninth on the list of identified breeds in terms of bites.

At the time that Kitchener banned pit-bull-type dogs in 1997, they ranked eighth in terms of the breeds for which dog attacks had been reported for the preceding year. In Essex county, where Windsor recently banned pit-bull-type dogs, statistics indicate that the five worst offenders in terms of dog bites were German shepherds, Labrador retrievers, huskies, cocker spaniels and Jack Russell terriers.

In Winnipeg, there have been bites by 87 identified breeds and 94 crossbreeds since 1989. Since pit bulls were banned in 1990, there have been over 3,000 dog bites in that city. Clearly, banning pit bulls would not prevent the vast majority of dog attacks.

An argument is sometimes made that, while all dogs bite, only a few breeds cause serious injury when they attack. Again, this hypothesis does not withstand scrutiny. A study by the Canadian hospitals injury reporting and prevention program examined the dog breeds involved in attacks that were serious enough that the victim sought medical attention at one of eight reporting hospitals. The study revealed that 50 different types of purebreds and 33 types of crossbreeds had been involved in the attacks, the most common breeds being German shepherds, cocker spaniels, Rottweilers and golden retrievers.

What about the most serious of attacks, those resulting in the death of a person attacked? Since 1983, there have been 23 reported human fatalities in Canada due to dog attacks. A total of 55 dogs were involved in these attacks, and only one of these dogs, an American Staffordshire terrier, would be banned under the proposed legislation.

What about the second assumption, that all pit bulls are dangerous? Trying to determine what percentage of pit bulls are involved in attacks is difficult, if not impossible. As it is generally acknowledged that a large percentage of dogs are never licensed, it is impossible to know how many dogs there are of each breed in a municipality.

However, in the city of Toronto study referred to earlier, the pit bulls involved in biting incidents accounted for only 1% of the pit bulls licensed in the city at the time. For comparison purposes, 5% of Labs and 6% of German shepherds licensed within the city had been involved in biting incidents over the same period. Even if we assume that every pit bull in Toronto was licensed at the time, 99% of Toronto's pit bulls did not harm anyone. Clearly, the assumption that all pit bulls are dangerous is not based in fact.

To summarize, there is no scientific data on which to base the conclusion that a breed-based ban is the answer to dealing effectively with the dangerous dog issue. Although such bans might comfort individuals who have

had unpleasant experiences with particular breeds or who have heard of attacks by specific dog breeds in the media, the bans do not act to effectively regulate the behaviour of any breed or of dogs and their owners collectively.

One could take the view that, while a breed ban might not be effective, it won't do any harm either. However, such a view ignores that many serious problems will result from the passage of this legislation. OVMA has identified five such problems that need to be considered.

First, difficulties associated with breed identification will make a breed-based ban very difficult, if not impossible, to enforce. There are many breeds and cross-breeds that resemble the potential banned breeds, and municipal law enforcement officers do not generally have sufficient training to determine if a dog is in fact a banned breed. Even if they have that training, they will lack the scientific means for determining a dog's breed that can withstand the rigours of a legal challenge. I think Mr. Bryant has proved that conclusively.

Second, under the legislation, all pit bulls born prior to or within 90 days of the passage of the legislation would be classified as restricted pit bulls, meaning that they would continue to be owned by Ontario residents. As no province-wide registry of restricted dogs exists, how will municipalities determine whether or not a dog is restricted once the legislation is passed?

Third, enforcing the breed ban could potentially cost taxpayers millions of dollars. Municipalities would bear the cost of enforcing the ban and of housing, euthanizing and disposing of banned dogs. Provincial taxpayers would foot the bill for the court costs associated with the ban.

In Great Britain, one of the few jurisdictions where a breed ban has been tried over a large area, the government spent millions of pounds trying to prove that dogs belonged to one of the banned breeds. Yet, more than 50% of all dog owners charged under Britain's Dangerous Dogs Act in 1997 were acquitted. The ban was lifted shortly thereafter.

Fourth, because a province-wide ban will make it impossible to adopt out banned dogs, these dogs will have to be euthanized or turned over to a research facility. The city of Denver, which banned pit bull types of dogs in 1989, euthanized approximately 500 banned dogs in 2003. If Ontario's experience is similar to Denver's, we might see 4,300 euthanasias a year in Toronto alone. Ontario municipalities will be forced to put to death thousands of otherwise healthy, happy dogs each year, dogs that had never harmed and would never harm anyone. The senseless slaughter of animals in this fashion should be repugnant to anyone who cares about animal welfare.

Finally, the breed ban would simply not solve the problem because it would not address the root cause: breeders and trainers who produce dangerous dogs and dog owners who do not take appropriate precautions to ensure that their dogs do not pose a danger to others.

What are the alternatives? If the province does not introduce a breed-based ban, what could it do to address

the dangerous dog issue? There are several measures that the province could undertake, some of which are included in Bill 132.

First, the province could regulate breeders to ensure that those who breed dogs are appropriately qualified to do so and prevent those who have a history of rearing dangerous dogs from doing so in the future.

Second, the province could work with veterinarians, breeders and other interested parties to educate the public about pet selection and responsible pet ownership. By educating dog owners about how to choose a dog that's right for them, train the dog appropriately and recognize aggressive behaviour early on, most potential attacks can be prevented.

Third, the province could introduce measures to identify dangerous dogs, regardless of breed. The legislation, as proposed, would enable the courts to identify a dog that has behaved in a manner that poses a menace to the safety of a person or domestic animal and to order that certain precautions be taken to protect the public from that dog. The veterinary profession supports this proposal and the OVMA has offered to work with the province to establish how to determine if a dog's behaviour has been menacing and to assist in the identification of dangerous dogs before they attack.

Fourth, the province could increase the potential penalties available to the courts when a dog owner fails to act appropriately to safeguard the public from his or her dog. Bill 132 includes such a provision.

Finally, dangerous dogs could be required to be muzzled and leashed when off the owner's property, strictly confined when on the owner's property, and spayed or neutered. Where necessary, dogs that pose a danger to the public could also be required to be euthanized. Bill 132 includes legislative amendments to implement these measures, and the OVMA supports those proposed amendments.

In conclusion, the OVMA reiterates its opposition to those portions of Bill 132 that are breed-specific. As noted earlier, breed-based legislation has not worked elsewhere and will not be effective in Ontario. For that reason, there is not a single respected organization with expertise in this issue that supports a breed-based ban. Faced with all this evidence, the OVMA urges the province to reject breed-based legislation as a means of addressing the dangerous dog issue and to sit down with animal experts to craft legislation that will truly safeguard the public from dangerous dogs. Thank you.

The Chair: Thank you very much for your presentation. We have time for one—

Applause.

The Chair: Ladies and gentleman, I caution you again that applause or any form of recognition isn't permitted in standing committees.

We have time for one brief question from the government side.

Mr. Zimmer: Do you have any idea how many pit bulls are typically dropped off at the humane society or come into vets' offices?

Dr. Zaharchuk: Dropped off, as in abandoned, or—

Mr. Zimmer: Yes, given up.

Dr. Zaharchuk: No, I don't have that number off the top of my head.

Mr. Zimmer: Is that number available?

Dr. Zaharchuk: You'd probably have to talk with the humane societies themselves. I'm sure they keep records of that.

Mr. Zimmer: In your opinion, how easy or how hard is it to adopt pit bulls out—that is, when people give them up and are looking for homes? How successful are they?

Dr. Zaharchuk: In general, they're not now because there's such a stigma attached to them. The media has played it up to the point where—

Mr. Zimmer: But before the legislation, before the bill was presented. In year's past, how hard was it to adopt a pit bull out?

Dr. Zaharchuk: Again, I could not actually specifically answer the question, but I suspect it's probably just about as difficult as any other mature dog that somebody has abandoned. I don't think there's any—

Mr. Zimmer: In your view, is it any harder to adopt a pit bull out than, say, a spaniel?

Dr. Zaharchuk: My guess would be that in fact it would be.

Mr. Zimmer: And why is that?

Dr. Zaharchuk: That's because, again, people think there's a problem there. They've heard so much and they're scared.

The Chair: Thank you very much for your deputation and for your time in coming here today.

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STAFFORDSHIRE BULL TERRIER CLUB OF CANADA

The Chair: Is Mr. Clive Wilkinson, president, Staffordshire Bull Terrier Club of Canada, in the room? Yes?

Please come up.

Mr. Kormos: Chair, while Mr. Wilkinson is seating himself, this last submission from the Ontario Veterinary Medical Association talks about the repeal of the UK ban. There has been a whole lot of talk about that legislation.

Legislative research, could we please have the history of breed-specific banning in Great Britain/United Kingdom, its impact and its current status? We've gotten all sorts of mixed messages about whether it's still in effect, whether it's being repealed or has been repealed. We'd appreciate that from legislative research. Thank you kindly.

The Chair: Legislative research has recorded the request.

Mr. Wilkinson, welcome this afternoon. You have 15 minutes for your presentation. Please begin by stating your name for the purposes of Hansard. You can use all of it if you wish, or if any time remains, it will be divided

equally among the parties for questions, or given to one party if insufficient time remains.

Mr. Zimmer: On a point of order, Mr. Chair: Mr. Wilkinson, late Friday afternoon, requested the AG's office to provide him with certain materials about the media reports that the AG had access to. We've worked that up over the weekend and I'm happy to provide that today to Mr. Wilkinson. There are about 200 media reports.

Mr. Clive Wilkinson: Thank you very much. I'll take that with me later.

The Chair: Mr. Wilkinson, the floor is yours.

Mr. Wilkinson: My name is Clive Wilkinson. I'm the president of the Staffordshire Bull Terrier Club of Canada and I've been an owner of a Staffordshire bull terrier for the past 60 years. The club wishes to thank the committee for allowing us time to make the presentation. We also want to go on record that we support the introduction of legislation to reduce the number of dog bites in Ontario, thereby protecting our fellow citizens.

We are here today to ask each committee member to support the removal of the breed-specific-legislation component of Bill 132. We believe there is a much better solution for everyone in this province and would like to see Bill 132 altered to be win-win legislation for the general public, responsible dog owners and this government.

The breed-specific component of Bill 132 is based on the conclusion that pit bulls are a breed apart and, as such, must be banned to protect the public, with Winnipeg held up as a successful model. This line of inquiry did not look at critical ownership factors and has resulted in the proposal of a breed ban in Ontario. When you compare Calgary's generic approach, where all dogs are treated equally, to the Winnipeg approach, which used breed bans to try to reduce dog bites, it is clear that breed bans are not the ideal way to deal with dog bites. As others will speak to this, we will not go into the details of the statistics that demonstrate this. I would like, however, to share one startling fact: Calgary reduced its dog bites by 70%. Winnipeg, using a breed-ban approach, would have to ban 58% of all of its dogs to reduce its dog bites by a similar percentage. Therefore, we propose that Ontario's legislation be modelled on Calgary's and not on Winnipeg's. Ontario deserves to have the best, and nothing less.

In the absence of strictly enforced generic dog laws similar to those in Calgary, responsible breeding and registration of dogs becomes a significant factor in producing safe family pets, and this applies equally to breeds and to breed registries.

The Staffordshire Bull Terrier Club of Canada is a CKC-recognized breed club. We have a constitution and a code of ethics that all members and breeders must adhere to. For breeders, restrictions include not advertising in newspapers, spaying and neutering companion animals, researching prospective buyers as to their ability to be competent and responsible dog owners, and not selling puppies to pet stores. When someone buys a dog

from a responsible breeder, they are carefully screened and are also provided with information that will help them be a responsible owner. For example, breeders require that new owners attend obedience training classes with their dogs, as all new dog owners should.

We came here today to speak for all dogs. However, since we represent the Staffordshire Bull Terrier Club of Canada, we would like to explain why it would be a tragedy to ban our breed from Ontario.

The Staffordshire bull terrier is a small dog, standing 14 to 16 inches tall and weighing between 28 and 38 pounds. It has been a Canadian Kennel Club registered purebred breed since 1965. It is relatively uncommon in Canada, with just over 60 to 65 being registered in Ontario each year.

Where the Staffordshire bull terrier really shines is in its temperament. For the last 100 years, breeders around the world have worked to develop a dog that is completely stable around people, and in particular with children. They have succeeded. Scientists at the University of Southampton's Anthrozoology Institute were asked to investigate what were the breeds best suited for children based on temperament, trainability and the ability to tolerate the unpredictable nature of children. Their research identified the Staffordshire bull terrier as one of the 10 best breeds for children out of 162 breeds studied. Researchers describe the breed as happy, outgoing and with a wicked sense of humour. Also, Staffies can really represent a bomb-proof dog with kids, and Staffies are usually tolerant to the point of martyrdom with children.

The United Kingdom's biggest animal rescue centre, Battersea Dogs Home, was recently quoted as saying that your biggest risk with a Staffie is getting licked to death. They get called the "nanny dog" because they are so good with children. The home went on to state that the most common reason for abandonment is that they'd been owned by young, macho men who became disappointed by the Stafford's total lack of aggression toward humans. It should not surprise you, then, to learn that there is not one recorded case of a purebred, CKC-registered Staffordshire bull terrier making an unprovoked attack on a human being in this country.

I'd like to digress from my speech for a moment. This morning, a member here asked, "Why did Winnipeg put the Staffordshire bull terrier on the list?" The answer was, "They must have done something." When Winnipeg introduced its law, there was one Staffordshire bull terrier living in Winnipeg at that particular moment. In Windsor, where a similar law has also been applied, there is one Staffordshire bull terrier registered to the CKC living in Windsor.

Because of our lack of action in Winnipeg in 1990, I went to New Brunswick, where the Staffordshire bull terrier was named as the number one aggressive dog. Taking the figures from the Canadian Kennel Club that four Staffordshire bull terriers were living in New Brunswick, and two of them were known to have left to live in Ontario, this leads us to believe that very little, if

any, research has been done in this particular department. If research was done, it would clearly show that the Staffordshire bull terrier should not be on this list.

Why, then, you may be asking, do some of the bite statistics indicate that Staffordshire bull terriers have bitten? This gets us to the heart of the problem: breed misidentification. The sad truth is that the media, citizens and even animal control officers regularly misidentify the purebred breeds as pit bulls identified in Bill 132. Our club has a rescue service. Humane societies and animal rescue services are constantly informed of this. During the past 10 years, we have been contacted over 220 times to rescue a Staffordshire bull terrier from a dog pound. Of these 220-plus calls for rescue, only five turned out to be Staffordshire bull terriers: four from the Ottawa area and one from Oshawa. In other words, almost 99% of the calls were for misidentified dogs. Furthermore, these breed misidentifications were made by people who work with dogs on a daily basis.

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Our club also investigates dog bites that are published in the written and electronic media, where the name "Staffordshire" is involved. In all these cases, the investigations proved that the bites did not involve any Staffordshire bull terrier; 100% of the breed identifications were incorrect.

If the dogs were not Staffordshire bull terriers, what were they? In the vast majority of cases, the dogs weighed more than 60 pounds, stood more than 20 inches tall and were of mixed breeds. This calls into question the validity of breed statistics. What portion of reported pit bull attacks were misidentifications? Our experience shows that it is very large.

This experience shows that Bill 132, if passed in its current form, will be unenforceable and will saddle municipalities and the provincial government with extensive costs in their attempt to enforce and defend the breed bans. These costs are inevitable.

In the United Kingdom, huge amounts of taxpayers' money has been spent defending the Dangerous Dogs Act from legal challenges by owners. At round-table discussions where all major stakeholders were represented, including the Metropolitan Police Service, the kennel club and the Royal Society for the Prevention of Cruelty to Animals, all parties agreed that the Dangerous Dogs Act, in its current form, was unworkable because breed-specific legislation is not the solution.

Worldwide experience has shown that breed bans do not work. They punish responsible owners with good dogs, while the backyard breeders and irresponsible owners switch breeds. Dog bites are a people problem, not a breed problem.

Bill 132 can be changed so it will effectively protect the people of Ontario from all dangerous dogs while also protecting the rights of responsible owners and breeders. To do this, Ontario must remove the breed-specific legislation from Bill 132 and introduce elements of the Calgary model in the law.

Regardless of how the final law reads, the purebred Staffordshire bull terrier must be exempt from Bill 132.

Exemptions must also be made for all purebred breeds registered with recognized breed clubs like the Canadian Kennel Club, the AKC and the UKC.

We'd now like to answer any questions.

The Chair: We have roughly one minute remaining in your time, Mr. Miller.

Mr. Miller: He hasn't left me a lot of time. Mr. Wilkinson, thank you very much for coming today. I just want to be clear: You said there's never been a bite by a Canadian Kennel Club Staffordshire bull terrier.

Mr. Wilkinson: I said an unprovoked bite.

Mr. Miller: And you've owned the dog for—

Mr. Wilkinson: For 60 years. I believe there's one person in Canada who has owned the dog longer than I have. So I've been around them. They are a delightful animal. I have three granddaughters, each with their own. My granddaughters are all five years of age and younger and they are the light of my life. I would not put anything in the way of harming my grandchildren or my children, when they grew up, so I have no doubt whatsoever.

The Chair: Mr. Wilkinson, thank you very much for your time in coming here today and for your deputation.

BANNED AID COALITION

The Chair: I now call upon Dawne Deeley from Banned Aid.

Mr. Kormos: Mr. Chair, while Ms. Deeley is seating herself, can I ask legislative research—in Mr. Wilkinson's submission, he made reference to a report by the University of Southampton's Anthrozoology Institute about the best breeds suited for children etc. He has some brief comments from that report. Could we get a copy of that report? I'm cognizant of the fact that this report seems to indicate that there are qualities or defects that dogs have that make them more or less suited for particular things. So I suppose the report is a double-edged sword, depending on one's perspective, but I'd appreciate reading the report.

Mr. Miller: In Mr. Wilkinson's presentation, he talked about the breed ban in the UK, and I would be interested in having research find out if the Staffordshire bull terrier was included in the breed ban in the UK or if it was omitted from that.

The Chair: Thank you very much. Legislative research has recorded both requests.

Ms. Deeley, you have 15 minutes for your deputation. You can use all or part of it. If any time remains, it'll be divided among the parties to ask you some questions. Please start by clearly stating your name for Hansard. The floor is yours.

Ms. Dawne Deeley: Good day, ladies and gentlemen. My name is Dawne Deeley, and I am a resident of Sidney, British Columbia. My background in dogs includes 15 years' involvement with the Canadian Kennel Club; life membership with the Finnish Kennel Club; an exhibitor and breeder of Karelian bear dogs under the tsarshadow prefix; professional journalism status with both the World Dog Press Association of Belgium and

Dog Writers Association of America; and the position of western Canadian chair, British Columbia representative for the Dog Legislation Council of Canada. In addition, I have owned American pit bull terriers for 28 of my 47 years.

Before I begin, I would like to thank the MPPs for considering the distance involved in my travelling here and thus allowing me to offer suggestions geared to amending sections of Bill 132. Furthermore, I acknowledge the Honourable Michael Bryant for addressing concerns raised due to canine mismanagement and irresponsible dog ownership. I am confident that no one here today or over the next three days of public hearings makes light of or intends any disrespect toward bite victims and their families.

Today, I make my presentation as a representative of the Banned Aid Coalition, a national group of concerned clubs, fanciers and dog lovers comprising the following: Dog Legislation Council of Canada, Staffordshire Bull Terrier Club of Canada, American Staffordshire Terrier Club of Canada, Golden Horseshoe APBT Club and Advocates for the Underdog. The Banned Aid Coalition brings together a broad demographic of dog lovers, all of whom are bound by a handful of commonalities: love and respect for the canine race, the preservation of positive working partnerships between human and dog, and the assurance of harmonious domestic relationships between man and his historical best friend.

At no time should lives be at risk or individuals placed in harm's way simply over the right to own an animal. Yet by the same token, no animal should ever be deliberately sacrificed on the altar of human indiscretion or intentional shortcoming. In other words, the stewardship of any species should be a privilege, not a right, and that privilege must be earned.

The three breeds this government wishes to target have long served as dogs of honour, from gracing recruitment posters and raiding World War I machine gun nests to rescuing flooded livestock, guarding home and hearth and even serving with distinction as police and SAR dogs. These animals have, in the hands of people who cared, proven their societal worth.

The situation in Ontario is not a unique one, nor was the province's response. Many countries have rushed to push through breed culls, but several eventually realized the futility of implementing and interpreting such broad generalizations. Others, such as Italy, gave up on breed-specific legislation while holding their stand on questionable ownership issues. Although no dog is banned outright in that country, ownership of 92 breeds, ranging from little, tiny Welsh corgis to Doberman pinschers, bull mastiffs, German shepherds, Newfoundlands and the like, is prohibited to children, delinquents and criminal offenders who have proven to cause harm to either people or animals. Those within that group who are found to harbour a dog from the list of affected breeds face having their animal seized and re-homed. Law-abiding individuals must still obey strict leash and government laws.

Of further interest may be statistics gathered by the Finnish Kennel Club. From a national population of approximately six million, there are over 300 registered breeds. Individual membership tops over 100,000, with associate club affiliate memberships close to half a million. Over 37,000 puppies are registered annually. Roughly one in five Finnish households owns one or more dogs, making the estimated total of canines in that country well over 600,000.

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This relatively small organization rules the registry and governance of dogs in that country with a tough-love approach. Tracking a dog—any dog—is relatively simple. Well over 70% of the Finnish canine population are registered, recorded purebreds. Most of the remaining plus or minus 25% are also purebred dogs but, due to strict regulations within their parent breed organizations, have, for whatever reason, been deemed inappropriate for breeding and are thus removed from the gene pool.

General breeding is also strictly monitored: “The Finnish Kennel Club supports dog breeding and breeders in all aspects. Careful attention is paid to the temperament, breed characteristics and appearance of breeding stock. The FKC also supports various studies on health, temperament and behaviour. All dog breeders are FKC members [and follow] the generally accepted code of conduct in their breeding programs.”

In addition, the Finnish Kennel Club commissioned the University of Tampere to do a study on the social standing of the dog in their society. The study was called *Dogs in Our Community* and proved conclusively that the dog is an integral part of any community. Following this study, Project Citizen Canine was carried out, opening dialogue between local governments, experts in various fields, dog owners and dog-related businesses. Further to this will also be a long-standing study, for example, on dogs in youth.

Neighbouring Sweden implements similar guidelines, strictly enforcing leash laws and public control, maintaining the sanctity of its purebred population by overseeing fair and consistent breeder legislation and encouraging its civic population to make animals part of their daily routine.

The result is nations with no current breed restrictions or bans—incidentally, Finland has never even considered the possibility—and there are no future considerations of either, plus there are healthy populations of American pit bull terriers, American Staffordshire terriers, Staffordshire bull terriers and related bull-type breeds.

How or what, you may ask, does any of this have to do with your situation at hand here in Ontario? If one looks at comparative information worldwide, it becomes clear that a parallel thread runs through much of the responsible dog ownership cloth. Certainly before these hearings are over, you will have been presented with numerous civic, provincial and international bylaws regulating successful canine ownership.

Of most recent note would be the May 28, 2004, reading of New Brunswick’s Bill 55, the *Restricted Dogs*

Act. Originally struck as a counterpoint to the tragic 2003 death of James Waddell, the bill, in its original form, called for the immediate application of various curtailments aimed specifically at the Staffordshire bull terrier, the American Staffordshire terrier, the Rottweiler, the Akita and owners thereof. If implemented, they would have done little to address the problems at hand—unattended and abused dogs, incorrectly labelled breeds, or dogs who had slipped through the licensing noose, among others—but retribution toward responsible breeders and caring owners would have been swift.

After careful consideration and two days of public hearings over November 16 and 17, 2004, the Honourable Kelly Lamrock, Liberal MLA and original presenter of the bill, reappraised the act as it was written, to be replaced with suggestions for the *Dog Owner Responsibility Act*. Among the changes brought to bear:

—To keep or strengthen: the application in all cases to be province-wide; stiff penalties for negligent owners; revision of the “one bite free” rule and the distinction between a bite and an attack; removal of dogs from negligent owners; repeat convictions would result in permanent loss of the right to own dogs.

—To change: the law is across the board, i.e., all dogs, all owners, no BSL component; mandatory licensing, not insurance; leash and/or muzzle requirements to be consistent with veterinary standards and applications.

—To add: tougher licensing and codes for breeders, such as breeder bonds and registration, enforcement of housing and kennelling standards and individual dog registrations; education and enforcement to become a priority at the grassroots level in schools and through public safety programs.

Other suggestions tabled included a requirement to chip or tattoo and register within each municipality each dog bred and/or sold, and incentives to breeders who could provide proof of such activities as obedience classes or canine good neighbour tests, or who actively encouraged spaying/neutering of all companion animals and who completed or had repeated clean kennel and ground inspection records.

These proposals were enthusiastically embraced by the attendant presenters, for now, culpability would be levied in the right direction: toward those who disrespect the ownership privilege.

The Chair: Ms. Deeley, just to remind you, you have about three minutes remaining.

Ms. Deeley: All right.

There are many who feel a certain degree of responsibility lies not only with the owner of a problem dog but with the breeder. There is more to the purchase than simply choosing the flavour of the week, more to the selection than grabbing the high-profile crossbred designed special. At-risk dogs can often be nothing more than animals placed in inappropriate homes: large working breeds languishing in small apartments, undisciplined garden varieties left to their own devices.

The term “backyard breeder” takes an entirely new outlook with every garage-born litter, every unanticipated

"accident," and once that no-name puppy has been given away or sold for a pittance, backyard breeder interest in the animal dies. Newspaper classifieds are laden with cheap advertisements for these unfortunates, and rarely do any guarantees accompany them.

By contrast, the annual Canadian Kennel Club publication, *Dogs Annual*, provides a detailed and comprehensive guide not only on who to contact but what questions to ask and what pitfalls to avoid. The patient, enlightened purchaser is far more liable to make an informed decision and the novelty is far less likely to wear off.

You will have the opportunity in my handout to review not only a selection of contracts but also copies of codes of ethics and examples of health documentation and kennel club registration.

Responsible breeders are willing to stick their necks out. Should a situation arise, a responsible breeder is there to provide a safety net for both dog and owner, whether it be suggestions for a training class, education on ownership or simply where to find a decent vet.

This is not just a breeder problem. It's an ownership problem. It's an enforcement and identification problem. It's a media and reporting problem. It's everybody's problem. We have situations that have fomented for a long time and it will take time to reverse these trends, but you can. Encourage local spay/neuter clinics, implement mandatory registration by microchip or tattoo, and encourage this process by reducing fees on licences. Track breeders and introduce strict guidelines for those who consider this a hobby by introducing kennel housing bylaws—

The Chair: You have about 30 seconds.

Ms. Deeley: OK.

Perhaps most importantly, bring dog/human interaction and education into schools and focus on safety for all.

We Canadians believe we live in a country with a liberal outlook, but breed-specific legislation is not the product of a liberal thought pattern.

In closing, I would like to echo a sentiment I'm sure you've already heard: Punish the deed and blame the hand on the lead, but please, do not ban the breeds.

Thank you again for your time and consideration.

The Chair: Thank you very much for your submission today.

CANADIAN DOG JUDGES ASSOCIATION

The Chair: I would now like to ask Dr. Richard Meen of the Canadian Dog Judges Association to please come up.

As I've stated before, you have 15 minutes for your submission. You can use all of it if you wish or a portion of it and leave some time for questions. Please begin by stating your name very clearly for Hansard. The floor is yours.

Dr. Richard Meen: My name is Richard Meen—m-e-n; the other way is my personality.

To have the opportunity to speak to you this afternoon is a privilege that I do not take lightly. To be able to present to this committee issues of significant import concerning Bill 132 and the role of canines in our society and our culture is not a frivolous exercise. Canada and Ontario are internationally envied because of the responsible, democratic and equitable approach taken to resolve very complex issues. Thank you for permitting me to appear.

I am here today speaking on behalf of the Canadian Dog Judges Association. The Canadian Dog Judges Association is an independent organization representing individuals approved to judge purebred dogs. It has members residing in all of our provinces and territories across the Dominion. On a weekly basis, members of this organization are demonstrating Canadian expertise regarding canines, both here in Canada as well as internationally.

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I personally am a past president of the Canadian Kennel Club, as well as past chairperson of the board of directors of that organization. I have been an active member of the Canadian Kennel Club since 1969. I'm a breeder, exhibitor and judge of purebred dogs. I have participated in educational activities regarding canines across Canada, the United States of America, Australia, the United Kingdom and Sweden. Recently, I presented a keynote address at the University of Guelph, Ontario Veterinary College, when they were hosting an international symposium on canine aggression.

It also happens that I am a practising psychiatrist who specializes in aggressive behaviour in children, adolescents and young adults. I am the clinical director of a maximum security facility for dangerous adolescents here in Ontario. The Canadian Dog Judges Association believes that I can speak with some authority regarding the issues that are being addressed here today.

Professor Konrad Lorenz, the internationally acclaimed Swiss ethnologist, reminded us in his book *Man Meets Dog* that if it were not for canines we would all probably still be huddled in the back of our caves fearful of stepping out. *Homo sapiens* and *Canis familiaris* developed a bond in the prehistoric era that has not only never been broken but continues to evolve. The quality of our lives has been significantly altered because of the role that dogs have played in it. We have been guarded; we have hunted more effectively; we have slept better and therefore been more rested and able to problem-solve more productively; we have been allowed more leisure time. We live longer. All of this because of the contribution made by our dogs. The canine-human bond is like no other. No other bond, not even the human-human bond, is as reliable and loyal to its purpose: a mutually supportive dependent relationship.

Canines allowed themselves to be manipulated by their partners—us—like no other species on this planet, thus permitting the selfish goals of each to be realized. Canines did not mind being the passive partner. To this end, different breeds—900-plus to date—evolved, all

with very specific characteristics and qualities that would enable the human partners to achieve their goals. No part of any purebred dog is accidental: the shape of its head, the colour of its eyes, the length and quality of its coat, the shape of its back, the style of its gait as well as the nature of its personality. Down through the centuries these individual breed characteristics have been passionately preserved by dedicated enthusiasts in every corner of the world. No peoples have developed without their canines, whether they be African pygmies, Mexican Aztecs, Russian aristocrats, Australian sheep herders, or coal miners in Yorkshire. When the first Canadians walked here across the northern tundra over the isthmus and headed south, they were accompanied by their faithful four-legged companions. Man evolved; dogs evolved. Canines are the living history of our journey on this planet. Each breed represents a specific step along the way—ours, not theirs.

Canada's indigenous breeds represent a significant aspect of our history: the Tahltan bear dog, the Eskimo dog, the Labrador retriever, the Nova Scotia duck tolling retriever and, of course, the Newfoundland, all symbols of who we were and now are.

Perhaps we no longer need a little black and white dog to rout our bears or a huge black hairy guy to pull fishing boats out of the Atlantic or even a frisky little red dog to seduce our ducks, but they are necessary to remind us who we are and where we came from. In other words, they remind us of something so easy to forget: our humanity.

Aggression is normal and necessary. Aggression is a complex force consisting of many components: genetic, biochemical, psychological and social. When aggression is managed properly, it is powerful, positive and productive. When it is not managed, it is still very powerful but negative and destructive. The natural, normal aggression of canines is ours to manage.

May I remind you that there is no breed either past, present or in the process of becoming that has in its description of expectations, otherwise known as the standard, any statement that says it is acceptable for aggression not to be effectively and safely manageable by the human companions on whom they are dependent. We should be so lucky to have that expectation in our own families, but that is another topic for another committee.

Let's face some facts. Aggression in our society at this point in time is big bucks. Aggression feeds our fantasies and our mythology. Healthy, productive, necessary aggression is taking a back seat in our culture and is being replaced by destructive, murderous revenge and annihilation. Vicarious violence is ever present. Newspapers, television, radio, film, literature and, if I may say, even politics seem to thrive on it. It is a bad-news day if you cannot get the lead item to pump up a lot of adrenalin. It is not accidental that the Terminator became the governor.

Canines have never stopped serving us well, no matter the label or name we place on them. There are more

canines in our communities than at any other time in our history. The pet food industry is a growth industry. The canine population is not going to decrease. Today more than ever, it is known that a family with a dog is happier and healthier than one without. It is an established fact that senior citizens with canines as a part of their daily routine are physically, psychologically and socially better off than their friends without such companionship. The dog will always pay attention and wag its tail, even when the conversation makes no sense. Heart attack victims who return to their home with a pet in it do much better than those with just a geranium.

It is unfortunate that some breeds bring with them histories and myths that often feed our own pathologies. Our dogs, not wanting to disappoint us, therefore go along with this indulgence. How many people with a Pekingese see themselves in the imperial court of ancient China? How many with Russian wolfhounds have delusions involving czarist Russia? How many with pit bulls dream of the Roman forum, one may ask. Some fantasies and dreams are merely entertainment. Some, when acted out, are dangerous.

Unfortunately, when we project and displace our responsibilities, innocents frequently suffer. Canines of any breed are easy and willing victims of such irresponsible ownership. They are eager to please their masters—their parents—just like any child. As you all know, responsible breeding, supported by responsible ownership, provides good citizenship in all species.

I would like to suggest that breed-specific legislation of any kind will serve no useful purpose whatsoever in regard to aggressive behaviours in canines. It will only serve, however, to continue to contribute to avoiding the real issues concerning violence and aggression in our society: that is, avoiding our responsibility as individual citizens for the behaviour not only of ourselves, but also the behaviour of those who are dependent on us.

The Canadian Dog Judges Association has adopted the following policy: The Canadian Dog Judges Association supports the Canadian Kennel Club's policy on dangerous dogs and also the implementation of very significant financial penalties for those owners or breeders who do not follow the appropriate leash laws. We also indicate our resistance to breed-specific legislation as a solution to eliminating dangerous dogs and support the concept of penalties against individual owners for not taking due responsibility for their pets.

Thank you for your time.

The Chair: Thank you very much. We may actually have time for a full round of questions, beginning with Mr. Hampton. We have about a minute and a half per side.

Mr. Howard Hampton (Kenora-Rainy River): I take it from your brief—and please tell me if I'm wrong—that you don't see anything to recommend a breed-specific ban. Is that a fair assessment?

Dr. Meen: That is correct.

Mr. Hampton: So in your view, if a breed-specific ban, which this legislation anticipates, were implemented, what do you think the repercussions would be?

Dr. Meen: The repercussions of a breed-specific ban would be on the dogs themselves, not on the issue of bites. The evidence I heard earlier on indicates that bites have nothing to do with the breed; they have to do with the ownership and the way in which the dogs are cared for.

I didn't check the statistics, but I heard the statistics about Winnipeg and Calgary. They're pretty impressive. Other statistics around the world, which I can't quote, also say the same thing. Your bites won't change.

Mr. Hampton: So your recommendation is to go back to the drawing board?

Dr. Meen: No. I think the act has some very important pieces. I think that to hold our citizens responsible for our behaviour and what we do with our dogs is what I'm saying. The act should not go back to the drawing board. But breed-specific bans will not help.

Mr. Hampton: So you would take that out?

Dr. Meen: I would take that out.

Mr. Hampton: Do you have any other recommendations?

Dr. Meen: I think the issue is that, once again, an act like this is only a little bit of the icing on the cake in terms of what aggression and violence is all about in our society.

The Chair: Do we have a question on the government side?

Mr. McMeekin: Just a comment. I really appreciate your words, Doctor, and the connections you made. I don't know whether you know this or not, but you've articulated in a somewhat oblique way many of the kinds of things we've heard today, but you did it in a way that I found easy to understand and quite entertaining. I really appreciate some of the connections you made to violence and how many of the things that we engage in, in politics and other aspects of life, are really just a reflection of the society we live in, and that we've got to stop and pause and look at that as well. I appreciate that.

Dr. Meen: Thank you for hearing my point.
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Mr. Miller: Thank you for your presentation. I gather you're against breed bans. What other specific kinds of things do you think would make sense in terms of dealing with dangerous dogs? For example, do you think increased licensing makes sense, or leash laws?

Dr. Meen: One of the key issues around making changes is collaboration, consensus and communication, out of the youth justice act. The same thing applies for addressing communities' needs around aggressive dogs and dog attacks. So I think you'd go to the communities. I heard recommendations when I was standing at the back of the room that make a lot of sense in terms of looking at how people are being responsible.

Mr. Miller: Secondly, a large part of this bill is the ban on pit bulls. You've had a lot of experience with various breeds. Is the pit bull a breed?

Dr. Meen: I forget exactly how many breeds the Canadian Kennel Club recognizes; it changes every year. But they still only recognize about half of the kinds of

breeds available in the world. So "pit bull" one day will be defined specifically as the Staffordshire bull terrier, the American terrier, the borzois. The standards will be very clear. Dogs are evolving, and they will continue to evolve.

Mr. Miller: But it's not one thing specifically right now?

Dr. Meen: I'm sure you'll be hearing from people who would describe very specifically that breed. In the general public, there are mythologies and they have an image as to what they think a pit bull is.

The Chair: Dr. Richard Meen, thank you very much for your time today.

ENGLISH NANNIES FOR DOGS INC.

The Chair: I'd like to call on Diana Fischer, English Nannies for Dogs Inc., please. Diana, welcome to the committee this afternoon.

Ms. Diana Fischer: Thank you very much for asking me.

The Chair: Do you understand the ground rules?

Ms. Fischer: I understand and I'd actually like to leave time for questions.

The Chair: Please start by stating your name very clearly for Hansard. Your time is running.

Ms. Fischer: My name is Diana Fischer and I am a dog trainer. I have been a dog trainer for 20 years. I have been involved with animals for about 47 years, since my upbringing in West Africa.

I'd like to first point out, having listened to the president of the Staffordshire terrier club, that I do agree with him that the Staffordshire bull terrier is not an aggressive dog to humans. It is a very friendly, lovable dog to humans, and I don't think that it should be included in the ban. However, it's probably not great with other pets, but I think the people who own Staffords realize that and they're very responsible.

However, I do feel that the American pit bull or dogs that are part pit bull or the backyard-bred pit bulls are slightly different. It would be wonderful to have good breeders of all dogs but, as a dog trainer, I see many dogs that are badly bred and sold for high prices to my clients. I don't think there is any control that really works at the present time for many of the companion dogs that I see. They sell them shy dogs. They sell them dogs that will become aggressive later. They sell them dogs that are physically defective for, again, high prices. This is not just pet stores. These are the actual breeders I've come across in my 10 years here in Toronto.

Having spoken with various of the victims when this law first was presented to the Legislature, there's something that I worry about, and that is, these people are bitten severely. What happens if they are the main breadwinner of the household? Let's say the postal worker who had both her wrists broken and her ear removed had another job. Let's say she was a physician and she actually was bitten on the weekend and not injured on the job. Where would the compensation be for

this person, who has now had her hands broken and possibly can never work as a surgeon again? I don't see anything in this particular law that really addresses that at the moment, and that is very significant. To actually fine the person \$10,000 after the bite is simply not enough, and if you fine a person \$10,000 who has no job, who has no assets, you're not going to get the money out of that person. I think, as legislators, you really have to look into how you are going to protect the public against this type of injury.

To say that all pit bulls are dangerous is untrue as well. Many people will say, "My pit bull, my American Staffordshire pit bull, is a wonderful dog. It is the sweetest dog." And it probably is, because within every group of dogs there are different breed traits. For instance, a border collie is a herding dog. What makes it a great working dog makes it a very unacceptable pet. A good working dog would be racing around the house, destroying everything in the house, nipping at the children. It would be horrible, but it doesn't make it a danger to society. A Jack Russell terrier is bred to kill vermin; therefore, anything that moves and so forth, it's after. The damage that it can cause is limited by its size.

But when you're dealing with animals with very powerful jaws—let's say you've got 100 pit bulls. Probably 70 of those dogs are actually pretty nice dogs. But what about just five of them? Just take five pit bulls out of 100 that are incredibly aggressive, that can remove your face, that can remove a limb. One man lost both his hands trying to save his dog. How are you going to stop those dogs? What are you going to do about those people? Are you going to expect your police force to help the person who is under attack? When I was attacked, the police did not come for 15 minutes, even though the police station was actually three minutes away. Why didn't they come? Because they're not equipped to remove a pit bull once it has started that type of attack. You can't just draw your pistol and shoot it; you'll probably shoot the victim. If you put your hands on it, what if it turned on you? Why would you want the police officer to lose his hand? So we are dealing with a slightly different animal.

To say that we are going to educate people, well, I've been training dogs for 20 years, and that means that I've been training people. People have their own lives. They have their own jobs. To learn about dogs, you have to live with them, like I do. I live with 10 or 12 dogs every day. I deal with hundreds of dogs, and I've trained thousands of dogs and have been in thousands of people's houses. They're normal people. I don't know if any of you own dogs, but you've got other lives. You're not going to read up in books about dog language and body movements and so forth. It just isn't credible. You're going to teach your dog to sit, to stay, possibly to lie down and do a few things. That's about all any working person is going to do. Private training is very expensive, and if you have a backyard pit bull, you're not going to take it off to obedience class, because that's just not what you're interested in.

So how do you control these dogs? I think you can only have zero tolerance to this type of attack. Because you are legislators, you cannot allow one such attack as this. I'm not going to talk about Rottweilers and this and that, because that's not on the table today, but I do believe we are dealing with a dog that, once it reaches the stage that some of these dogs are at, you cannot get that dog off. You can shoot it 12 times, 10 times, beat it: You cannot get that dog off.

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That is not the way with other dogs. Dogs bite very carefully when they are well socialized. Who is going to let their puppy play with a pit bull? Very few. So the only dogs they usually get to play with are other pit bulls that are equally matched. Even when I walked pit bulls in groups—nice dogs; I would kiss them on the lips, I would love them, great dogs—once they started to play with the other dogs, 70 pounds of muscle, whack, right into the side of a 20-pound poodle, which can actually dislocate its shoulder. You can't allow this to happen.

Anyway, that is what I'm trying to present today, and I would like to see perhaps some other things added to the law. But certainly we need to have a large amount of insurance on people who own dangerous dogs. Should their dogs injure somebody so severely that they are unable to continue their working life, I think we need something.

Educating children, educating schools—I'm sorry. I've been in this business many, many years. It's not going to happen, and it's not going to happen today or tomorrow. What's going to happen over the next 10 years? It's not going to happen. You can't have everybody trained, and nobody's that interested.

I'd be happy to answer any questions.

The Chair: Thank you, Ms. Fischer. We should have about one minute per party, beginning with the government.

Mr. McMeekin: Thanks very much. I appreciate your presentation. You raise and train German shepherds?

Ms. Fischer: I used to. I now have border collies.

Mr. McMeekin: I'm intrigued, because a number of presenters have suggested that we ought to be looking at dangerous dogs rather than one particular breed. Many have spoken to that.

The Winnipeg statistics that we've received, which I've just reviewed, seem to indicate that in every year since 1989, right through to 2003, the dog which, just in terms of quantity of bites, is most prolific by far, far and away—in some cases, six or seven times to one over the pit bull—is the German shepherd.

Ms. Fischer: I wouldn't dispute that. I think there should be a law that covers the dogs that are physically able to take your thigh muscle off, such as a German shepherd. Yes, they should be—

Mr. McMeekin: You talked about the size of the dog being important.

The Chair: Thank you. That's about the limit of your—

Ms. Fischer: Yes, it's very important: the size, the damage.

Mr. McMeekin: Should we be looking at German shepherds as well?

The Chair: Mr. McMeekin, your time for questions has passed. Thank you. Mr. Miller?

Mr. Miller: Thank you for presenting. I just want to make sure I have something clear. Part of the problem with this legislation is the definition of "pit bull." I believe you said at the beginning of your presentation that you felt—in the description, it says a pit bull is a pit bull terrier, a Staffordshire bull terrier, an American Staffordshire terrier, an American pit bull terrier and any dog that basically looks like it. Am I clear that you said you felt a Staffordshire bull terrier—

Ms. Fischer: I do not feel the Staffordshire bull terrier is in any way a danger to human beings. First of all, it's a very small dog. It may be a powerful dog; it's just not the same. And it is a very expensive dog. People value paying for an expensive dog.

Mr. Miller: So a Staffordshire bull terrier should not be on this list; that's what you're saying.

Ms. Fischer: I don't think it should be, no.

The Chair: Thank you very much. Mr. Kormos, any questions?

Mr. Kormos: No, thank you, Chair.

The Chair: OK. Thank you very much, Ms. Fischer, for your presentation.

DONNA TREMPÉ

The Chair: I'd like now to call Donna Trempe. Thank you very much for coming this afternoon. Welcome to the committee. You have 10 minutes for your presentation. You can choose to use all of it or part of it. If you don't use the whole 10 minutes, then the remaining time will be divided among the parties for questions. Please begin by stating your name for Hansard.

Ms. Donna Trempe: Donna Trempe. Thank you, ladies and gentlemen of the Legislative Assembly, for inviting me to make a contribution to the debate on Bill 132 and the issue of dangerous dogs. My husband, my son and I are among the people most intimately involved in this issue and most grateful that the Attorney General is actively looking at the whole issue of dangerous dogs in Ontario. My family and I think it is not before time, as we have been waiting six years now for decisive action to be taken.

I applaud certain sections of the bill: doubling fines to dangerous dog owners up to a maximum of \$10,000, jail sentences, the requirement for dog owners to pay restitution to victims, and giving police and municipal bylaw officers the authority to search for dangerous dogs. What I don't agree with is banning specific breeds.

On April 29, 1998, I dropped my beautiful eight-year-old daughter, Courtney, off at a friend's house after picking her up from school. That was the last time I saw my daughter alive. She and her friend went next door, where the owner let out her dog, a non-neutered, 150-

pound bull mastiff. The dog immediately ran to Courtney and lunged at her throat. My 68-pound daughter did not stand a chance against this beast. Courtney had never been to this house before and certainly was not familiar with the dog. She was given no opportunity to familiarize herself with the animal while it was under the owner's control.

Courtney died in the ambulance on the way to the hospital of massive blood loss and asphyxiation. In April 1999, there was a coroner's inquest into Courtney's death. The inquest ruled that Courtney's death was an accident. No. Courtney's death was a homicide. Homicide is when a person, directly or indirectly, by any means, causes the death of a human being.

You see, this bull mastiff had attacked before. We have 16 former neighbours willing to testify that the dog was known to be aggressive before the attack on my daughter. The fact that the dog had shown aggressive behaviour is a reasonable basis upon which to believe that criminal negligence charges were warranted, or at least should have been considered. Todd Reybroek, a Toronto lawyer and the owner of this dog, in allowing his dog to be out in his yard, committed a homicide.

Police in York region, we were told, were too busy to investigate. We fought for years in the Ontario justice system and spent \$64,000 of our own money in legal fees. The owner, a lawyer, you will remember, was not charged, not fined so much as one cent.

Our experience with the police investigation and the coroner's inquest process proves that these organizations are not carrying out their public responsibilities effectively and that the government places a very low priority on keeping our children safe. I hope, with work, that Bill 132 will ensure that we never have to hear again those terrible words, "A child was killed by a dog."

The coroner's inquest into Courtney's death made 36 recommendations. The last time I checked, nine had been implemented, 10 had alternative measures adopted, seven were rejected, six did not apply to the agencies they were directed at and one did not get a response of any kind.

In my opinion, Bill 132 has its good points and its bad points. A bull mastiff, not a pit bull, killed my daughter. Rottweilers killed a three-year-old boy in Vancouver. Presa canarios killed a woman in San Francisco. Even small dogs such as west highland white terriers and cocker spaniels have been recorded as killer dogs.

Am I against dogs? Not in any way. I love dogs and own a German shepherd. What I am against is irresponsible dog owners. I agree with the Humane Society of Canada that banning only pit bulls will not solve the dog-biting problem. German shepherds, cocker spaniels, Rottweilers and golden retrievers are actually the most common biters. Personally, I would like to see a ban on bull mastiffs. I wish they were extinct.

What we need are stiffer penalties and heavier fines for the owners of dogs that attack. Heavier fines and jail sentences for drunk drivers, along with increased public condemnation, have reduced the number of drunk-driving fatalities. When irresponsible dog owners learn that they

will be sent to jail or fined \$10,000 if their dog attacks, more people will muzzle their dogs or decide to own a breed less likely to be dangerous.

Currently, the owner of a dog that rips his kid's face apart might face a muzzle order or fine. If a human being did that, he'd get 10 years in jail. We need owners of these dogs to know that they are going to have to pay. Why not adopt a law that will be implemented, a law that has a set fine or a jail term for the owner of a dog that bites or kills a person?

I have a letter from the Honourable Irwin Cotler, the Minister of Justice and Attorney General of Canada, stating that the Criminal Code of Canada already includes a law whereby charges can be laid against the owners of dogs that attack for criminal negligence causing bodily harm, a serious offence that carries a penalty of 10 years in prison, and for fatal attacks, where the dog kills a person, criminal negligence causing death, with a potential penalty of life in prison. Why are we not charging the owners? Why are these charges not being laid? Mr. Cotler has been able to cite only two cases in which jail sentences were given, in spite of the fact that an estimated half a million dog bites occur in Canada every year.

Please, let's not look at banning specific breeds of dogs. Let's look at banning the irresponsible, dangerous owners who either train their dogs to attack or don't train them in good behaviour. Put them in jail. Fine them as you would a drunk driver. Make our society aware that if their dog attacks, there will be serious consequences, not months and years of lawyers battling in the legal system. That's what happened to us and that's just not right.

Why don't we adopt a law, Courtney's Law, that has a set fine or jail term for the owner of a dog that bites or kills a person? You can't know the endless heartbreak and frustration of being a mother, having your daughter killed by a dog that was known to be dangerous and not one arrest was made and not one fine, not one cent. Make them pay.

The owner of the bull mastiff that killed Courtney should be in jail. If this kind of penalty had been enforced a decade ago, maybe my daughter would be in high school right now. Maybe Courtney would still be alive. Thank you.

Applause.

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The Chair: Thank you very much for your presentation. Again, regardless of your sympathy for the deputant—on whose behalf, for the committee and the Legislative Assembly, I also extend our deepest sympathies on the loss of your daughter—a show or display is not permitted.

The first question should go to the PC party.

Mrs. Munro: I think all of us understand and appreciate the kind of courage that it takes for you to come here today to tell us your story. As we think back on the experience that you had and the tragedy, obviously I think the comments you make to us today have that much more validity for all of us here.

I'm particularly conscious of the fact that you made a comment about the way in which society deals with drunk drivers, and I totally agree. I think you can take it one step further: We aren't talking about banning cars, yet in this piece of legislation, we're talking about banning a particular dog. We're talking about taking an animal that looks, by its appearance, like something that should be eliminated, not by what it has done.

I know that you know I introduced a private member's bill that tries to deal with the issue by defining an animal that then has done severe physical damage, because, like you, I believe it is a question of ownership. I want to thank you so much for having the courage to come here today to make the presentation that you have. I think all of us, as parents, as legislators, as owners of dogs, whatever has brought us here, appreciate your being here today. Thank you.

The Chair: Mr. Kormos, it would have to be a brief question.

Mr. Kormos: Yes, sir. Ms. Trempe, I want to thank you for an incredibly potent submission to this committee. Again, I repeat what has just been said, and that is that every member of this committee, every member of this audience, is committed, I believe, to protecting children and other members of the public from attacks by vicious dogs. The debate is about whether you achieve that with a breed-specific ban or with the incorporation of the jury recommendations of the coroner's inquest into Courtney's tragic death. Not a single one of those recommendations was to the effect that a breed-specific ban will stop that type of tragedy.

If there was evidence that a breed-specific ban would eliminate, stop, halt the tragedy of people being attacked by vicious dogs, I would be supporting it enthusiastically. But I say to you that it's not a matter of a paucity of evidence in that regard. There has been no evidence in that regard to date. I tell you, your contribution is a valuable one.

The Chair: Mr. Zimmer, any comments?

Interjection.

The Chair: OK. Thank you very much for coming in today.

TORONTO HUMANE SOCIETY

The Chair: Do we have a representative present from the Toronto Humane Society? Thank you very much for coming in today. You'll have 15 minutes for your presentation. Please begin by introducing yourselves for the purposes of Hansard. If you choose to use your entire time, then there won't be the opportunity for questions; if you leave some time, the questions will be divided according to the parties. Please go ahead.

Mr. Tim Trow: Thank you. My name is Tim Trow. I'm the voluntary president of the Toronto Humane Society. Beside me is Linda Elmy, who's the manager of humane education at the Toronto Humane Society and has done considerable research into these issues. Beside her is Inspector Connor. Inspector Connor is appointed

an inspector under the OSPCA act, and he is the managing director of the Toronto Humane Society.

Beside him is Pell Capone. Pell is a lawyer in Toronto and a past chair of the Toronto Humane Society.

Inspector Connor is going to give our presentation.

Mr. Mike Connor: Mr. Chair, honourable members, ladies and gentlemen, the Toronto Humane Society has been in the business of protecting animals and serving the needs of the citizens of the city of Toronto for the last 118 years. Along with others, we have grown increasingly concerned about the frequency and seriousness of attacks by dogs against citizens and other animals, and we feel that there are real community safety concerns with dangerous dogs.

In 2004, the Toronto Humane Society admitted 2,311 dogs to its shelter. Of that number, 884 were lost or stray dogs. This number is indicative of a real problem in the city of Toronto in that, at our shelter alone, almost 1,000 dogs came through the doors as a result of irresponsible or negligent owners.

The strengthening of the Dog Owners' Liability Act is long overdue and is very much supported by us. We do not, however, agree that part of the legislation include a ban of any specific breed of dog, including what is considered pit bull.

It may be politically advantageous to deal with this issue in this manner. It does not work in the long run or even address the root of the problem. Other jurisdictions which have enacted similar breed-specific legislation have even taken the significant step of repealing it, because it just doesn't work. People who have a desire to own or possess vicious dogs will find dogs of other breeds to take their place.

Some of the other specific sections of Bill 132 that we have concerns about are: firstly, the definition of what constitutes a pit bull. This definition is far too vague and includes any dog that has an appearance and physical characteristics that are substantially similar to a pit bull terrier, a Staffordshire bull terrier, an American Staffordshire terrier or an American pit bull terrier. This could conceivably include a lot of dogs currently in our communities and shelters that are not related in any way to any of these breeds. For example, currently the Toronto Humane Society is sheltering a British bulldog, which is a Canadian Kennel Club and an American Kennel Club registered breed, but which could, under Bill 132, be construed as one of the types of vicious dogs described in the legislation. Bill 132 would put a reverse onus on the owner of such a dog to prove that it is not a pit bull. Sheltered or rescued dogs do not arrive with papers detailing their lineage. It would be difficult for the owner of an adopted dog to prove its breed type without the expense of a lawyer and tying up the courts.

Secondly, the definition of what constitutes an aggressive dog is also far too vague. It includes any dog behaving in a manner that poses a menace to the safety of persons or domestic animals. This could potentially include any action by a dog that can be interpreted by a person as being aggressive, such as simply barking at people from inside a fenced yard.

If these two definitions are allowed to remain unchanged, law enforcement personnel are going to have difficulty in dealing with complaints at the community level. There are numerous neighbour complaints involving domestic animals which eventually become acrimonious and confrontational, and accusations of viciousness of an animal could unfairly become an issue. The police and other enforcement officers should not have to make subjective decisions based on obscure definitions. This is even more important because search and seizure powers are also included in the draft legislation. Dog owners could be put at an unnecessary disadvantage in certain situations and be potentially subject to overzealous enforcement. This could lead to even further bogging down of our justice system.

Thirdly, the act specifically allows for the transfer of pit bulls to research facilities. The Toronto Humane Society objects to this and asks that you consider deletion of this section from the bill. It is one thing for the breed not to have a future in the province, but another for it to be used for experimentation. In fact, some municipalities, including Toronto, already have bylaws in place to prohibit the transfer or sale of pound animals to research facilities.

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Fourthly, the act specifies that if a pit bull, which would be considered a restricted animal, is seized by a peace officer, it must be taken to a municipal pound. The Toronto Humane Society objects to this part of the legislation and sees no reason that an accredited humane society cannot accept these animals unless action is going to be taken against the owner under the Dog Owners' Liability Act.

We have the facilities, such as protected shelters and veterinary care facilities, to look after these dogs as well as any municipal pound. The Toronto Humane Society has been providing this service for years. Also, our inspectors and agents routinely remove animals that are in a state of distress from various places, and these animals would normally be held at the humane society's shelter until the issue is resolved. Under this proposed legislation, pit bulls would have to be housed at the municipal pound. This is only going to add unnecessary confusion to the process.

It is the position of the Toronto Humane Society that this legislation was written in haste. There was little or no consultation with anyone, including those organizations with proven expertise in this field, such as the Ontario Veterinary Medical Association, the Canadian Kennel Club and humane societies, to name a few.

We agree the public has a right to be concerned about this issue. We, who deal with this issue every day, are equally concerned. However, the reality is that this legislation only deals with a small part of the overall problem. What is needed is a much more encompassing strategy to deal with all the issues involving domestic animals in our community. This should be a process which includes all of the stakeholders. We need to address issues such as licensing all dogs and dog breeders, mandatory

spay/neuter programs, microchipping and mandatory training, especially for large breed dogs and their owners.

Standards of care for all domestic animals: We have long proposed an Ontario code of animal care and believe now is the time to legislate a higher level of protection for animals in our community. The Ontario Society for the Prevention of Cruelty to Animals Act must be revamped to deal with a much more common problem than dog attacks; that is, the neglect and mistreatment of animals by irresponsible owners. The current OSPCA act is antiquated, weak and ineffective. For example, the current act does not allow for inspectors or agents to retain animals after they are removed from a neglectful owner, no matter how bad the neglect, as long as the owner pays the cost of the original removal and they have not been charged with a criminal offence.

In conclusion, I would like to thank the committee for allowing us to address you today. I would like to assure you that the Toronto Humane Society is supportive of any initiative that helps make our community safer for both people and animals, and we are more than willing to participate in any process that will work toward that end. Thank you very much.

The Chair: We have about a minute and a half for each party to ask a question, beginning with Mr. Kormos.

Mr. Kormos: Your recommendation about mandatory neutering/spaying programs is interesting because earlier today when staff bureaucrats from the Ministry of the Attorney General were here, I asked them about the grandparenting of de facto existing pit bulls, which means they'll be around for at least 10 more years even if this bill passes, and then the imposed sterilization of them. I asked specifically whether the primary goal of the sterilization was to pacify the dog, make it more passive, or to prevent it from breeding, and the response, as I recall it, was that the impact of sterilization was to make the dog more passive. Further to that, are you suggesting that if we're going to regulate breeders and license them, the logical next step is that people like myself who own a dog, unless I'm a licensed breeder, should have to have that dog neutered or spayed?

Mr. Connor: Yes, I think they should. If there are legitimate reasons to allow exemptions, of course, to allow the animals to remain not spayed or neutered—and I'm sure there are many things that can be exemptions—that's fine. But I think as a humane society movement, we would very much like to see that all animals, especially animals that have come in as surrenders and adopted animals, do not leave without being—

Mr. Kormos: I can only assume what the effect of neutering me would be in terms of my demeanour. Is there an impact on male dogs that's different from female dogs, for instance?

Mr. Connor: Yes, it does make them more compliant, more passive. It takes away the testosterone, the issues, and does usually have a tendency to make them much less aggressive.

The Chair: On that highly speculative note, we'll move to the government caucus.

Mr. Kormos: That's what I assumed.

Mr. Zimmer: In the year 2004, you took in 2,311 dogs. How many of those were pit bulls?

Mr. Trow: About a quarter.

Mr. Zimmer: Of the 824 you took in and classified as lost or stray, about how many pit bulls?

Mr. Trow: Could I just change my answer? At any given time, about a quarter of the dogs in the shelter are pit bulls. In fact, of the total, they're a much smaller number. It's simply that other dogs get adopted much easier. I'm sorry.

Mr. Zimmer: All right. I'll come to that. So at any given time, a quarter of those 2,300 dogs are pit bulls.

Mr. Trow: No, a quarter that are in the shelter at any given time. So of about 100 in the shelter at any time, about a quarter would be, but of the grand total, it would be much less.

Mr. Zimmer: You said you have difficulty getting those adopted.

Mr. Trow: More difficulty.

Mr. Zimmer: Why is that?

Mr. Trow: We have more difficulty adopting all the bigger-breed dogs. Small-breed dogs we can adopt within 24 hours of their arrival, but all large dogs of any kind—because we're in a city environment.

Mr. Zimmer: But pit bulls tend to be on the smaller side.

Mr. Trow: They can be quite heavy and quite large.

Mr. Zimmer: Any other reason why you might have trouble finding adoptive homes for pit bulls?

Mr. Trow: One reason is that we are extremely careful how we match homes with dogs. We are much more reluctant to adopt large-breed dogs into, say, an apartment building or a home that has children or other pets—cats. We impose a much more restrictive policy.

The Chair: That exhausts the time available. Mr. Miller, Ms. Munro, do you have a question?

Mr. Miller: Yes. If I could ask a question, one of your suggestions is for more licensing and microchipping. Could you expand on that a little bit, please?

Mr. Connor: Well, certainly at the community level, one of the things that is really not pursued in Ontario to the extent it probably could be is licensing of dogs.

Mr. Miller: What sort of percentage of dogs are licensed?

Mr. Connor: I would say that in some communities it's probably close to zero, because there is very little enforcement. Secondly, even in some of the more aggressive places, you're probably not going to get—and I'm taking this off the top of my head—any more than 25% or 30%. That allows a number of dogs to be around. They end up in shelters. Nobody has an idea where they came from, what their background is. That's where we would very much want to see a program front-loaded possibly into the legislation at the community level, where we make a more aggressive stand to see animals that either are licensed or microchipped.

Mr. Miller: Is microchipping an expensive process?

Mr. Connor: No, it isn't. It's relatively inexpensive—\$10 to \$15.

The Chair: Thank you very much for your time today.

Mr. Pell Capone: Mr. Chairman, one final comment, if I may: Section 17 of this bill, as presently written, would be in direct contravention of the OSPCA act in that an inspector under this legislation is authorized to obtain a warrant to seize an animal. This act would require him to turn the animal over to a pound, which would be in complete contravention of the OSPCA act. The OSPCA act has a complete procedure in place which directs an animal seized under the act, dealing with appeals for the dog owner etc. The way this bill is presently written, an animal seized under section 17 by an inspector of the OSPCA or its affiliates would have to be turned over to a pound. That would be in complete contradiction not only of the appeal procedure in the OSPCA act but also the intent of the act.

The Chair: Thank you very much for the observation and thank you again for your presentation here today.

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KARL VAARTJES

The Chair: I call upon Karl and Melanie Vaartjes. Are they in the room? Please come forward. The clerk will collect those and distribute them.

You have 10 minutes to make your presentation here today. You can use all or part of it as you wish. If any time remains, it will be divided among the parties for questions. Please begin by stating your name for Hansard, and thank you again for coming.

Mr. Karl Vaartjes: My name is Karl Vaartjes. Thank you for this opportunity to speak here. Let me first say that I feel this is a non-partisan issue, because it is a public safety issue. I'll tell you my story of what happened first.

I was sitting in my office, and I saw a dog come up to the front window of my house. I went outside just to shoo him off my property. As soon as I got outside, I realized there were two instead of one, and they were coming at me vigorously. I finally got back into my house. I was yelling, trying to shoo them off, because they were coming at me. I barely got back into my house, which was only about a metre back. My door was only about a metre away from where I was. I just barely got back in my house.

As soon as I got inside, I realized there was something definitely wrong with this situation. So I went back outside just to see what was going on. I walked to the end of my driveway, when I saw something happening. I was about almost a football field away, so I couldn't really tell what was going on, but because I just saw the dogs, I knew there was something not right.

Finally, I did hear the woman call out, "Why won't anybody help me?" So then I knew that's what was going on. I ran down to the end of the street. I went there. When I got to about 10 feet away from what was going on, before I even saw the dog move, it was on my arm. I

shook him off my arm. I grabbed a hold of it from behind. I actually ended up picking this dog up from the back, by the scruff of his neck, up into the air. At that point, he got loose, and within a blink of an eye, he was back on top of this child, which I later found to be a four-year-old boy. The mother was beside him, trying to protect her child.

The first thing I thought of was to protect this child. I picked the boy up and got him out of reach of the dog. As soon as that happened, the dog bit on to my leg. I have those sheets. They're black and white. I'm sorry I didn't get them done in colour. He bit on to my leg. The woman, the mother, pulled this dog back off my leg. At the same time, there was that other dog this whole time floating around, going back and forth. All I saw was a dog barking, foaming at the mouth. He never did attack. The Rhodesian ridgeback did not attack, although it was circling the area.

I got the boy inside and got 911 on the line. The mother went back in her house. I was left outside with these two dogs. After a while, I thought to myself, I didn't know how long I could wait. So I crossed the line. I figured I had to kill this dog. Before that, I was just trying to hold off until help came, and everything would be fine. I thought, I better kill this dog. I don't know how long I can hold on.

So I was squeezing—there was a chain around his neck. I was holding it from behind. As soon as I let a little pressure off this chain and I looked to see where that other dog was, this pit bull that I was holding on to was vigorously fighting back and forth. I could feel the breath on my arms, although at that point he never did bite me again. So then, when I squeezed as hard as I physically could—I'm 6'1" and in half-decent shape—he did cough up a little bit of blood, and that was it. He had full strength. Whenever I let off again, he was attacking again. The only time I let off the pressure is when I was trying to find the other dog.

Through this ordeal—eventually, the police came. Just to give you an idea of how I felt, when the police came, what was going on in my mind was, "At least if the cop has to shoot this dog, it will just be a bullet through the hand." Later on, when I thought about that, I realized how foolish that thought was, but at the time, it made sense.

I ended up getting six stitches in my leg and some puncture wounds in my forearm. The mother of the four-year-old received many puncture wounds on her forearms and hands. She had a through-and-through bite in each hand. Luckily, the four-year-old boy received only severe scratches on his back. The physical injuries are bad enough; we suffered real, serious emotional trauma, as all victims do.

I am firmly of the view that this legislation ought to become law in the form that it was introduced in the Legislature by the Attorney General. The way it is written still allows people with these dogs to keep them until they have passed on, with certain regulations that will make us a bit safer: muzzling and leashing these dogs when they are in public. The ban will give us real pro-

tection for the future. We should feel safer as a society—I know I will.

The more I hear about these stories, the more I find new stories popping up in the news. Every time a new pit bull story is reported, I relive the whole ordeal myself. For me, this was traumatic, and I know it was even more traumatic for the woman and child that I helped. It's been extremely difficult for her, and she's having a difficult time dealing with this, as is her four-year-old son. I have a new appreciation for what the term "pain and suffering" means. Maybe I didn't understand it before, but I do now. Every time one of these pit bull attacks is recorded in the news, I relive it for several nights after that. I can't tell you the number of sleepless nights I've had over this situation. The violent behaviour that this one pit bull showed me in approximately five minutes has taught me to fear dogs.

I think putting a ban on at least pit bulls and putting in other penalties related to all dangerous dogs is important as a means of protecting all of us, especially our children and vulnerable people. When this was happening, my wife sent my son outside to find me. I can't imagine what would have happened if that dog had gotten loose from me and found my 11-year-old son. That's one of the things I think about as I'm not sleeping.

I don't claim to be an expert on pit bulls, but I've learned a few things since I've been involved in this attack. I've learned that pit bulls are less predictable than almost all other dogs and they can, all of a sudden, snap. The pit bull that attacked me was in a family with a single mother and four children, ranging from 18 years old down to seven or eight—I'm not sure of the youngest one's age. In a letter, she wrote me that this was a family dog. The police told me that the dog got loose from the backyard while she was not there, when all this happened. Later I learned from the police that the woman simply got a fine, ranging from around \$50 to \$100—I can't remember the exact amount—and the dog was destroyed.

The Chair: If I can issue you a reminder, you have a little more than one minute.

Mr. Vaartjes: Thank you. In several letters, the woman almost blamed me for this attack, saying that I knew what I was doing when I went down the street. I find this extremely annoying. I wonder sometimes if I should have stayed away. Maybe a death would have occurred. Is that what it's going to take before something is done about this?

Basically, in a nutshell, I just feel this should be a ban about public safety. This is more about public safety than about politics.

The Chair: Unfortunately, there isn't time available for the parties to question you, but thank you very much for coming in today to talk about what I'm sure was a very disturbing and emotional moment in your life.

CANADIAN KENNEL CLUB

The Chair: Are the representatives from the Canadian Kennel Club in the room?

Mr. Kormos: Chair, while these people are being seated, the last submission raised the spectre, the image that we've read about from time to time in the paper of a dog turning on its owner. There was a recent report, as I recall, in the Toronto paper about a kid whose dog appeared to attack him. He lost a piece of his ear, if I recall the report correctly.

I think we know what it means for a dog to be dog-dog aggressive, the territorialism and all that stuff. Can legislative research get us some sort of opinion as to what the phenomenon is when, for no reason whatsoever—no provocation, if in fact there is such a thing—a dog appears, all of a sudden, out of the blue, to turn on somebody, especially its owner or somebody in the family? I think that's an exceptional circumstance. I'm sure there's been study and research done on it, and I think the committee should understand what the phenomenon is.

The Chair: Thank you. Legislative research has recorded the request.

You have 15 minutes today to make your submission. You can use all or part of it, as you see fit. If time remains, the time will be divided among the parties to ask you some questions. Please begin by stating your name for Hansard.

1510

Mr. Sonny Allinson: Thank you very much. My name is Sonny Allinson. I'm manager of communications with the Canadian Kennel Club. With me, making our presentation today, is Lee Steeves, who is a member of the national board of directors, representing Nova Scotia and Newfoundland, and who is also the chair of the Canadian Kennel Club task force on breed-specific legislation.

Ms. Lee Steeves: Good afternoon. We'd like to begin our presentation by thanking you today for offering the kennel club standing to speak on the subject of your draft Bill 132.

The Canadian Kennel Club supports well-crafted legislation, legislation that's written to protect the community and its citizens from dangerous dogs. We recognize public safety concerns. Please be assured that our 25,000 members join you in condemning vicious dog attacks, whenever and wherever they occur. Dog owners must be accountable, and they must be held accountable for the privilege of dog ownership. We commend the Ontario government for making this accountability the subject of provincial legislation.

However, the Canadian Kennel Club does not support the breed-specific area of Bill 132. As you've heard from many speakers today, under the wrong circumstances, any dog can bite. Targeting a breed or a family of breeds will not keep our citizens safe. It will not provide a strong legislative framework for law enforcement, nor will it support your municipalities that will, in the end, have to implement and enforce this legislation.

Many countries throughout the world have attempted to enact breed bans in an attempt to manage dog control issues. You're not alone. You'll hear over the four days of hearings how and why these initiatives have failed. As

written, Bill 132 will significantly increase costs to municipalities' dog control budgets without providing offset revenues. Costs will also rise in sheltering animals that will be given up as a result of the breed identification ban. Costs will increase in law enforcement as dog control officers attempt to implement the legislation as it is now written. Costs will increase in litigation as concerned citizens protect their pets. With all of these increases, your citizens will be neither safer nor more secure.

Furthermore, there will be a decrease in safety because this legislation will offer the public the incorrect impression that the dog safety issue has been addressed, thus providing a comfort level that is not justifiable. There will be a sense among those Ontarians who are not dog savvy that those dogs that are not banned will not show aggression, thus reducing citizens' caution in dealing with dogs in general.

No one breed of dog has ever been proven to be inherently aggressive. This has been proven in countless studies, many of which have been referenced today. As dog experts at the Canadian Kennel Club, we recognize that any dog can show aggressive tendencies in the wrong set of circumstances.

The Canadian Kennel Club currently recognizes and is the registry for 164 distinct breeds of purebred dogs. There are more than 350 dog breeds recognized throughout the world. There are many breeds larger and more powerful than those currently targeted by Bill 132. Bill 132 will not protect your citizens by removing the most powerful breeds available to those who want to use dogs for menace or for malicious intent. These individuals will simply be able to move on to larger alternatives.

We ask the question, who will legally assist you in supporting breed identification? Agriculture Canada, under the Animal Pedigree Act, is the Canadian authority for the identification and registration of all purebred animals. In the case of our 164 purebred dogs, this authority has been delegated to the Canadian Kennel Club.

Under Bill 132, if veterinarians are asked to declare that an animal is of a breed, presumably they would have to issue a document as an attestation. This puts them in violation of the Animal Pedigree Act, subsection 63(1). To quote: "Except as authorized by this act, where an association is authorized ... to register or identify animals of a distinct breed or evolving breed, no person shall ... issue any document purporting to evidence that a particular animal is of that distinct breed or evolving breed..." This accountability rests with the Canadian Kennel Club. So if you are looking to veterinarians, to humane societies or to animal shelters to identify purebred dogs, legally they cannot do it. Only the Canadian Kennel Club can identify those dogs.

No country recognizes a pit bull. This appellation does not denote a breed of dog; it is not definable. Those breeds included in Bill 132 are not, and never have been, a pit bull. In addition, there is no dog able to be classified and identified as a mixed breed. DNA will not prove evidence of breeds included in any dog that is not a

purebred. All we have for DNA evidence of dogs to date is whether or not puppies' parentage is the dogs that have been registered with a particular dog registry. If, for example, a person purchases a puppy, that puppy is registered with one of the dog registries, including the Canadian Kennel Club, and the person questions whether or not they actually have the purebred puppy they have purchased, we are able to have DNA testing performed to confirm whether or not that puppy is of the parents it has been registered to be the puppy of. That's the only capability at the present time we have for dog identification using DNA.

Again, no person, whether in a humane society, veterinary practice or even the CKC, could provide categorical proof that any dog is a mix of any breeds, and this is what you ask when you ask to define a pit bull. Simply looking at a dog and imparting to it characteristics that support its origins is not only unscientific but completely unfounded. Again, the only expert able to identify the dogs identified in Bill 132 in Canada under the APA is the CKC. Even we can't identify a pit bull. There simply is no such animal.

What differentiates a purebred dog from a mutt? The current draft singles out three purebred dogs: the Staffordshire bull terrier, the American Staffordshire terrier and the American pit bull terrier. These three breeds are purebred dogs, bred by breeders who are supported and controlled by registries that support ethical breeding practices. These are knowledgeable breeders. They conform to industry norms in supporting their puppy buyers. They advocate spay/neuter contracts. They educate puppy purchasers in puppy development and behaviour modification. They advocate puppy socialization and dog obedience training. They are required to uniquely identify every puppy they produce. Every purebred dog in Canada registered with the Canadian Kennel Club must be uniquely identified. Every one of those dogs can be proven to be the breed that it is purported to be on its registration papers, and those are the only purebred dogs in the country, except for those that might have been registered by other registries and brought into Canada.

Canadian Kennel Club breeders are bound by a code of ethics and a code of practice. Should breeders not conform to these standards, they are sanctioned by the registries under which they operate as well as by their breed clubs and also by their peers.

Purebred dogs are a controlled and highly managed addition to a home. Breeders carefully screen prospective purchasers. They turn away more buyers than they accept as appropriate homes able to meet stringent requirements for puppy ownership. We recognize that not every person should have a dog. We counsel callers appropriately.

Breeding of dogs is our passion. It's born of years of care, commitment, study, analysis, research and education. As with all things in life, we recognize that not all breeders are created equal. Commercial facilities breed many breeds strictly for profit. They sell to pet stores that are unable to provide breed information support. They

aren't able to provide mentorship or detailed advice about the puppies that are being sold, nor do they do any screening of potential purchasers. There are also un-knowledgeable, often well-intentioned folk who have purchased an unspayed female and have decided to let her have a litter to let their children have the opportunity to see the miracle of birth. The latter two groups have different motivations from those breeders described earlier. They are less knowledgeable, either because of the volume of puppies they're producing or because of the lack of volume that they're producing, and as a result they are less able to support those who are going to be the recipients of their puppies. Often this is where problems will occur and where increased controls of animal production would have a positive effect in reducing unwanted dogs.

1520

Dogs are not born dangerous. Illness may on occasion render a young dog a threat. This will be noticeable both to the owners and to the veterinarians who are caring for the dogs, and proper counselling will support the decisions that need to be taken. Dangerous dogs are created by owners. This may be intentional, in the case of dogs that are trained to fight or that are supported in aggressive behaviours by owners with malicious intentions. Dogs are dangerous if they have bitten, if they have attacked or pursued without provocation a person or a domestic animal, or if they are owned for the purpose of fighting. Municipalities must be in a position to impose appropriate penalties on irresponsible owners of dangerous dogs.

The CKC supports harsh penalties for those who are irresponsible in the ownership of dangerous dogs. We support mandatory licensing and strong enforcement of leash laws. We support public education and education in schools focused on dog awareness. We support spay/neuter requirements for all dogs not considered breeding stock. We support increased regulation of the selling and transfer of dogs. We support universal identification of dogs by either tattoo or microchip. We support maintenance of all dogs in a controlled environment; no dog should be allowed to run at large. We support harsher penalties for violations of all of the foregoing.

We would like to work with you to enhance the role of dogs in our society. We would like to work with you to create legislation that reflects worldwide experience, to offer Ontarians legislation that will improve their safety. At the same time, well-crafted legislation will be a bellwether for other jurisdictions—municipal, among our provinces, and international. Our country is seen by the world to be a country of progress, of fairness and of balance. Bill 132 has for many reasons garnered a great deal of negative international attention. Let's get it right. Let's use our Canadian sensibilities, coupled with Ontario's strong traditions of national leadership, to show our citizens and others who are watching that we are able to increase community awareness and safety without sacrificing innocent breeds that you now have on this list.

We can work together to design a bill that is reasonable, enforceable, affordable and non-discriminatory. Currently, there is a definition problem. You are poised and positioned to address this problem in this committee in a fashion that is workable and for the good of all. The Canadian Kennel Club would be proud to work with you to make that happen.

The Chair: Thank you very much. We have time for one quick question. Mr. Zimmer, it's your turn in the rotation.

Mr. Zimmer: You made reference a couple of times through your submission to the difficulties that the municipalities of Ontario were going to have with this legislation. You talked about the cost to them and other burdens placed on them.

I'd just like to draw your attention to a statement made by Roger Anderson, president of the Association of Municipalities of Ontario:

"AMO appreciated an opportunity to advise the minister on how to implement the province's pit bull ban in a manner that is practical, effective and affordable for Ontario municipalities and we know that the minister will continue to work with us as the legislation proceeds."

Then, and I won't quote, there are substantive quotes from a large-city mayor, Mayor Miller, from the mayor of a mid-sized city, the city of Kitchener, Carl Zehr, and from a small-town Ontario mayor, the mayor of Wawa, commending the McGuinty government for bringing forward this legislation and recognizing its utility.

What do you have to say about the support of AMO and large-city, mid-sized city and small-town municipal support for this legislation?

Ms. Steeves: I'm pleased to see that you do have support, because there are some very good aspects to this legislation. There are parts of it that are extremely well written and there are parts of it that will assist municipalities in dog control. Harsher penalties that are included in this legislation are excellent. You have a very good foundation, a very good starting point. You just have some of it wrong.

The Chair: That's all the time we're going to have today. Thank you very much for coming in with your deputation.

DOG LEGISLATION COUNCIL OF CANADA

The Chair: Can I ask if there's anyone here from the Dog Legislation Council of Canada? Would you please come forward. Welcome to the hearings today. If you've been around all day, and I believe you have, you'll know the ground rules. You've got 15 minutes. You can use all or part of it, and what remains will be divided for questions. Please begin by identifying yourself for Hansard, and the time is yours.

Mr. Nelson Ross: Excellent. Thank you so much. Hello. My name is Nelson Ross, and I'm here as a proud member of the Dog Legislation Council of Canada. I stand together with the rest of Canadian dog organ-

izations and continue to work toward better legislation and not breed-specific legislation.

As we have just recently seen, New Brunswick turned down their proposed breed-specific legislation, and the very Liberal MPP Kelly Lamrock, who proposed it, after public hearings publicly denounced breed-specific legislation. BSL is a failure, and we have already seen this here in Canada and throughout the world. Germany just repealed their country-wide ban after reviewing its failure.

Please listen carefully to the experts here today and those you will hear from in the upcoming days. High-profile media reports do not report in-depth findings and are not conducted by experts. Many of them do not even contain proper information, such as the correct breed information. We here in a progressive society should never base any legislation strictly on media reports, which is what we have found so far with Michael Bryant's "information" and statistical information.

All of our experts who work with the dogs, whether it be in the laboratories or in the training schools, agree: Dogs haven't changed; we have.

BSL doesn't work, and this bill is such a mess that it's impossible to support. Dog bite incidents are a serious problem and a complex issue. BSL is not. It simply doesn't work. These dogs never asked for our failure. With the rate of dog abuse, it's surprising that there aren't more bite incidents every day. But they don't, because they can still choose to love us as their owners and masters.

Fourteen US states have currently made it illegal to ban certain breeds of dogs. The inherent danger has clearly been refuted for over 50 years, and it's absurd that we're even discussing this as an idea or even have to defend dogs from this idea.

It's really quite simple: A dog is a dog is a dog. Court-certified dog psychoanalyst C.W. Meisterfeld, dog behaviour consultant Cheryl Smith, from right here—and even in the Ottawa court case *Couch v. Deopersaud* an Ottawa judge clearly ruled here in Ontario that no dog is inherently dangerous, for if one dog is dangerous, then all dogs would have to be stated as dangerous, and that sets a very dangerous precedent. There is not one single unprovoked human fatality from a pit bull type dog in Canada—to correct someone's earlier information. An individual made a statement that was incorrect.

It must be understood that humans are aggressive creatures and always have been. We enjoy contact sports, underground fighting circles which are viewed on TV as pay-per-view specials. We still continue to fight dogs in the most cruel and inhumane fashion. Wrestling is one of the most profitable sports, and boxing is an Olympic sport, with the final objective being to knock out your opponent, render them unconscious.

We view dog behaviour differently from 50 years ago, but have the animals changed? Have animal genetics changed? Has the blood born into animals changed? Or have we changed our expectations of dogs, especially in an urban environment?

I stand here today fighting for the lives of thousands who will be killed without a chance. If this bill passes, we as a society will have failed to address the issue of dog bite prevention, and those of us who read all the dog reports will be forced to continue to hear about children and adults being bitten and killed by dogs.

I myself, as a member of this organization, am forced to read and view all these dog bite incidents across Canada that happen on a regular basis. We saw a border collie kill a child in BC a few weeks ago, and I have to read this time and time again. I saw a golden retriever in the Niagara region almost remove the head of a child. This happens on a regular basis, and the claim that it is one breed is based strictly on ignorance. German shepherds and black and red Labrador retrievers top the list across Canada, and this isn't because they're bad dogs; it's because people say there are no warning signals to be had and they don't view them as dangerous, so they leave their children unattended. So what do we have? Dog-bite incidents because of a lack of education and awareness.

The life of Donna Trempe's daughter, Courtney, will not be saved. James Waddell will not come back to life. We have two major inquests involving dogs here in Canada, and neither called for breed bans. However, both called for the implementation of education programs in schools and communities to create awareness; both called for spay and neuter programs; they asked for better media coverage of the incidents, including small information tips from a recognized agency, to prevent further incidents from occurring. They recommended mandatory licensing and registration. This isn't happening here. We've neglected to follow the outlines given to us.

1530

We would like to be able to restrict people from owning dogs if they have been proven to abuse them in any way. Abuse breeds more abuse, just as we have seen in our human examples. Violence is something a dog learns; it is not a genetic trait. We do not have to continue to argue this point, as it has been stated for 50 years. Violence is something a dog learns and, simply, violence of any kind needs to be addressed, including human violence toward animals. This is not happening.

We have a bill to make stiffer animal abuse laws that has been sitting in the House of Commons for six years. That would help prevent animal attacks from occurring, and we could start today. This continues to be struck down and left. Humane societies have been fighting for this for years.

Look at the current situation. If someone kills a dog in the middle of the street, surrounded by witnesses, that person will receive a maximum of six months in prison, and most likely will just receive a fine. If a dog bites someone after they've been continually abused by him, the dog will most likely be put down and lose its life. Can we not see the hypocrisy in this situation?

With modern-day technology, we have seen a rise in animal abuse. We have seen a trend toward animal popularity coinciding with pop culture. "When Disney

promoted dogs such as the Dalmation as the new family dog, we saw a massive upsurge in Dalmation breeding across North America," stated the American Kennel Club. However, after only the first few years of the breed's new-found popularity, we began to see a trend in Dalmation abandonment. Dog bites involving Dalmations were also on the rise with its new-found popularity.

As we saw just last year in San Francisco, after a widely publicized dog-bite incident involving a presa canario, "There was an upsurge in all sorts, predominantly men, asking about buying this dog," said one presa canario breeder in the Bay area, Tracy Hennings.

I'm a young, responsible dog owner. I am the proud owner of a five-year-old American pit bull terrier. When I went to adopt her from the Ottawa Humane Society, steps had to be followed that were appropriate and necessary. First off, you can't see the dog, only pictures, in Ottawa, until you have passed the interview process. They screen potential owners for all the dogs. This should be a practise across the country and everywhere. Then you have to show proof of enrolment in basic obedience training, which is another progressive step for responsible dog ownership. Dogs are spayed or neutered at the time of adoption. They are also microchipped for proper return in case of being lost. They even do a property check to fulfill their responsibilities and duties.

When it comes to safety in our communities, this bill is a complete insult to all that we have worked for and to the hard-working people who have spent 20 or 30 years in dog-bite prevention programs who are looking for progressive steps. This looks to destroy all the work we have done and will continue to do in the future.

Pit bulls account for only about 5% of dog bites. Eliminating 5% of instances does not make communities safer. As well, this bill does not address private property, as most dog bite incidents involving humans occur in the home and not wildly in the streets. They occur with friends and family, with the family dog and, usually, children while unsupervised—another aspect of human failure which has refused to go noted. We refuse to evaluate our symptoms and what we do with our dogs, with our children, with our friends and with our families.

We are here defending community safety. I myself have been severely bitten by dogs twice in my life, once by a Labrador retriever, known as the chocolate lab and beloved by many, and also by a golden retriever. These were not bad dogs. My scars won't go away, and I have the deepest sympathies for all those who have been bitten by any dog, myself being bitten by a dog so severely that I was pulled to the ground. But this legislation does not support community safety. When I'm walking down the street, I'm not concerned about dogs chasing after me and trying to bite me. I don't know how many of you walk down the street every day and see dogs chasing you everywhere, but I do not see this happening in Ottawa and Toronto. The myth that dogs are running loose in the streets everywhere, biting people, is absurd. If someone came from another planet or some other culture, they

would think that there are dogs everywhere chasing us and biting as from the way the media reports those stories on the front page of every paper.

I'm not afraid of dogs, but of people. I'm afraid of being shot, stabbed, beaten, mugged. We have people every day—children being shot on buses, teens being stabbed in my own city of Ottawa. I'm not afraid of dogs chasing me.

At the end of the day, these are dogs under our care and we should pay attention to our failures. We have clear examples in Canada of these failures. In Winnipeg, one of the only major cities to ban dogs, the year after the pit bull ban was put in place in 1991, dog bites went up; in 1992, dog bites went up; in 1993 and 1994—what more examples do you need?—dog bites went up. There were around 200; by 1994, they were at 300. Only at that point in time did they negotiate more effective controls—leash laws—to try to reduce numbers. To this day in Winnipeg, dog bites continue to go up. So the myth that Winnipeg is a good example has to be debunked, because it's not a good example.

Calgary is a good example. Dog bites in Calgary have diminished by paltry examples, compared to Ottawa and Toronto.

How many examples do we need? How many people need to be bitten in Canada for us to really address the issue?

Removing good dogs to eliminate 5% of attacks does not make communities safer. In fact, in communities that have put forth pit bull bans and where they have assured everyone that they are now safe, we see a lack of education, awareness and dog training, and dog bites continue to rise.

Pit-bull-type dogs, as they have been deemed, are not the problem; Bill 132 and other legislation that doesn't support community safety is. So many communities have had to watch these failures and have repealed their bans for better legislation, and this example continues around the world. This has happened in the United States. This has happened here in Canada. We just saw it in New Brunswick. We saw cities in New Brunswick, like Plaster Rock, recently overturn it because their dog bites continued to rise.

Here's what the Canada Safety Council has to say about this: "Breed bans should not be used as a quick fix. The solution lies in a combination of effective animal control measures, reputable breeders, responsible owners, public education, backed up with enforcement and based on reliable data."

Even the Canada Safety Council is opposed to this bill. For any of you who are not familiar with it, the Canada Safety Council is a very conservative group, and with all respect, it should be. If a water gun hurts a child, they remove it from the market. They openly oppose this ban.

We have seen other Ontario communities, as Mr. Zimmer quoted before. We have seen Timmins, Thunder Bay, North Bay, Owen Sound, Cambridge—even the mayor of Mississauga openly opposed this ban. We are seeing this everywhere—city councillors, mayors.

The Chair: Just to advise you, you have about two minutes remaining.

Mr. Ross: Thank you kindly.

When it comes down to the real aspects of danger, we begin with removing dogs from repeat offenders and negligent owners. What needs to be recognized is that even after neglect, confinement and abuse, almost all of our dogs continue to show us love and compassion. People are the ones who have burned them, poured acid on them, cut them, removed their limbs, abandoned them, starved them and tortured them. I've had to see these images of all dogs. It is not just one type of dog.

Behaviour conditioning and dog training are both products of humans. Therefore, behaviour, good or bad, displayed by a dog is usually a testament to their owners. In any dog training course, one can see dogs trying to follow examples put forth by their handlers. We spend more time in training sessions training ourselves, as opposed to training dogs. It's a learning process for both parties involved.

Remember what, as humans, we have done to these dogs of the world, and yet they still come back to show us love and respect after all this abuse.

Breed-specific legislation is a proven failure and only victimizes responsible owners and good dogs.

We are discussing the fate of living, breathing creatures which have already suffered at the hands of humans for hundreds of years. We need to look in the mirror and address the issue at hand. We have to learn to take responsibility for our actions, as all dogs in Canada are required to be under someone's care and control. That is what we are asking for: to make people responsible for their dogs. Don't punish dogs for our failure. They never asked for this.

Ninety-nine per cent of all dogs in any given breed are never involved in attacks, so we cannot punish an overwhelming majority of responsible owners and good, loving, compassionate dogs.

The Chair: Thank you very much for your very well-thought-through and eloquently delivered brief. Unfortunately, we don't have time for questions, as you've used up virtually every second of your time. Thank you again for coming in and certainly for waiting patiently all day long.

I'm advised by the clerk's office that while our next deputant was one with whom we were going to try to teleconference, we are having difficulty reaching her. So is there someone here from the Humane Society of Canada?

Mr. Kormos: Mr. Chair, while these people are seating themselves, can I address two queries to legislative research?

I stand to be corrected, but during the course of listening to the last submission, I believe that I heard the submitter make reference to two inquests, in Canada, I presume. Of course, we know the Trempe inquest, which I think most of us are familiar with, if not all of us. I don't know what the other inquest is, and I'm wondering if other people may know. I'm wondering if legislative

research could get that inquest jury's recommendations and the facts situation.

I believe the other comment that was made was that an Ontario court—if I'm wrong, tell me now—has ruled that no dog is inherently dangerous. We're familiar with the Alabama ruling, and now we have copy of it, thanks to this morning. But I'm interested in the Ontario court ruling, if in fact I heard that correctly.

The Chair: Both requests have been recorded by legislative research.

1540

HUMANE SOCIETY OF CANADA

The Chair: I'd like to welcome you here today. You've got 15 minutes to deliver your presentation to us. Should you use less than that, the time remaining will be divided among the parties. Would you please begin by stating your name for the purposes of Hansard. The time is yours.

Mr. Michael O'Sullivan: My name is Michael O'Sullivan. I'm the executive director of the Humane Society of Canada. I've given a copy of our presentation to all of the MPPs over the last couple of months, so, for the sake of brevity, I'm not going to go through each and every point.

Our experience is based on practical as well as theoretical knowledge of animals. Over the last 35 years, our staff have worked not only here in Canada but also in other parts of the world handling dogs in dangerous circumstances as well as regular circumstances.

I have dogs myself and have two children, and I believe that you can care about people and animals. There's been a lot of acrimony and debate over the current legislation. I don't think there's a great deal we can do about what's gone on in the past, but we can move forward from here and try to put together a plan that saves the lives of people as well as dogs.

I gave expert evidence in the coroner's inquest into Courtney Trempe. It was probably one of the hardest things I've ever had to do. The coroner's inquest you were asking about, I believe, took place in Québec in 1988, and we can try to get some information for you on that. I was also involved, in the 1980s, in establishing the Dog Owners' Liability Act, which replaced the vicious dog act.

It's been my experience that, from a practical standpoint, every dog has the potential to bite. The good news is that most of the two million dogs living in Ontario don't bite anyone. By the end of today, if someone's walked their dog twice—and that's just one person—that means there have been four million interactions between dogs and people in communities all across Ontario today. Most of those are positive. However, when a single child is hurt or killed, an adult is hurt or killed, or a dog is killed, we believe that's one too many.

As far back as 1999, we tried to interest all levels of government in a dog-bite prevention plan, and we've declared May 22 to 27 as Dog Bite Prevention Week.

You may be surprised to learn that even when we offered to come up with challenge funding of \$1 million and asked provinces and territories to match it so we could begin a program in schools, we got virtually no interest from any level of government at all.

I believe in Ontario we have a unique opportunity with the safe schools program that was recently discussed and initiated late last year, and this would be a natural home for education for children. Children are the ones most often harmed by dog bites, because of their small stature. They're more likely to be bitten in the chest, neck and throat area. In the same way we streetproof our children about talking to strangers, traffic safety, drugs and alcohol and smoking, I believe this would be the logical home to try and prevent as many of these tragedies from taking place as possible.

I echo the remarks of deputants before me who talked about spaying and neutering. Right now, the problem in Ontario is that you can adopt or buy any size or shape of dog, anywhere in the province. If one person won't give it to you, someone else will sell it to you, and that's a problem.

The second problem is that a survey showed that about 81% of people admitted they did little or no training of any description with their dog. A dog is going to be a member of a smaller family unit and a part of a community, and could live as long as 14 years. Eight to 12 weeks of age is a critical period in a dog's life when they need to be socialized and understand that they're part of a family unit. Dogs are very single-minded, and the main thing that most people forget is, dogs don't view us as people, they view us as other dogs, so they react to us in the way they would to another dog.

That type of information is critical. Up on our Web site, www.humanesociety.com, we have practical tips for children, for parents and for dog owners on how to prevent dog bites. We think this type of information needs more widespread distribution. TAXI, which is a local advertising agency, has been incredibly helpful in donating a lot of their services in an ad campaign to prevent dog bites, but again, we need it in a more sustained way. It needs to become part of our culture.

Right now, anyone can hold themselves out to be a dog breeder. You can buy them from backyard breeders, from regular breeders. You can get them over the Internet. You can hold yourself out to be an animal trainer. That's a very dangerous thing, because people want guard dogs. You don't need any special licence if you want to have guard dogs on the premises. All of these things need to be addressed.

Spaying and neutering could be addressed right away, which we believe municipalities would embrace, because they'd see lower animal control and sheltering costs right away. If a dog was spayed or neutered, there should be no charge for a licence fee, but if your dog is not spayed or neutered, the licence fee ought to be \$300. That's an incentive that's within municipalities' power to pass now that would encourage spaying and neutering.

The police have a role to play. Regrettably, there is a real crisis of confidence that's long-standing in our

justice system. Many police officers recommend to people who have been the targets of spousal abuse or a break-in that they ought to get a dog for protection. So we're helping to perpetuate some of the problems you're hearing about today.

In all of my years, I have never had to kill a dog. I've been bitten many times. I've handled, thankfully, many more animals than that. I've never had to kill a dog or use lethal force to subdue a dog. We need better training for police officers and animal control officers and better access to tranquilizer guns and equipment that results in the non-lethal apprehension of dogs. In some cases, the biting incident takes place because of those very specific circumstances and the dog has no history of problems at all.

I think we need to move forward and stop taking out our angst, our frustrations and, frankly, our anger, on one or two breeds of dogs. I can tell you from the calls we've received that there's considerable concern on the part of other dog owners: "What if my dog breed is next?" This diverts all of our attention and resources away from the serious problem, and that primarily is, how do we prevent as many of these tragedies from happening as is humanly possible?

We've outlined in our letters to all of the MPPs an action plan which I think addresses some of those concerns. I think we can look at it in a way that it could be revenue-neutral. You would see lower hospital care costs from dog bites. You would see lower animal control costs because of spaying and neutering. You would see higher licence fees collected, encouraging people to spay and neuter their dogs, but also higher licensing fees and liability insurance requirements for dog breeders and animal trainers, as well as people who commercially sell out of pet shops. One survey, for example, found that only two out of 10 people get their dog from an animal shelter, a pound, a humane society or a rescue group. Most of these agencies already require spaying and neutering or do an adoption screening process.

I've had friends who were not working during the daytime adopt a puppy and keep him in a crate and think that's a sufficient way of training a dog. You wind up with a puppy at eight to 12 weeks of age, when the puppy needs to be socialized most, and at a year old, there's a beautiful bouncing dog, completely uncontrollable, and you have to undo all the damage that's been done. Many people just simply turn them in to a shelter or turn them over to a rescue group. Maybe four or five years later they have a much rosier view of what happened and decide to go out and get another dog, and repeat the problem all over again.

Some of the things we're talking about strike at the very fundamental aspects of human nature, and I'm not sure if we're ever going to resolve some of those problems.

Again, I believe there has been considerable acrimony over this legislation. I don't think revisiting it or casting stones is going to be particularly helpful. We need to move forward. We're delighted that the Legislature is

interested in the issue of preventing dog bites. It's something we've tried to get interest in for a long time. But with respect, in our judgment the current legislation doesn't address a lot of the issues we've raised. It's a very complex social problem and we need to move forward in a sustained way, as opposed to a one-off, to make this happen.

I can answer any questions.

The Chair: Thank you very much. We've got time for about a minute per party.

Mrs. Munro: Thank you very much for your thoughtful presentation. I wanted to ask you if, in your experience, you have had the opportunity to look at other jurisdictions. Much has been made out of the failure of those jurisdictions that have gone down the path that this government is currently considering; that is, breed-specific. But I was going to ask you a question with regard to trying to look at those jurisdictions that have perhaps developed a two-step category, because I think that while our goal at the end of the day is to have community safety with regard to dogs, clearly there is a difference between those that may nip or do something that frankly is socially inappropriate but doesn't deserve what I consider to be the kind of action that should be taken for those that do severe physical injury.

1550

Mr. O'Sullivan: Our experience is not just here in Canada but in many countries around the world. In brief, I can tell you personally that the types of dogs I've been bitten by the most have tended to be smaller dogs. They're very fast, they're very tenacious, and they don't let go. I've handled virtually every type of dog, and this applies to other animals I've handled as well, from wildlife to farm animals and so forth: You can't categorically say that this type of farm animal or this type of wild animal or this type of dog or this type of cat is going to be more aggressive.

I can certainly tell you that, under the laws of Ontario and under the laws of Canada, enforcing and even administering this legislation will be a nightmare. That doesn't mean you should shy away from difficult situations. In our judgment, there's a way to do it in a fashion that has compliance and acceptance on the part of the public. A lot of people who have called us or written to us have said, "I've been bitten by dogs," or "I don't own a dog, but I'm glad you're talking for both of us." I don't think this is the way to go. I don't think penalizing one—for example, in a car accident, we don't blame the car.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you, sir. It's interesting, your comment that dogs don't view us as people; they view us as other dogs.

Mr. O'Sullivan: Exactly.

Mr. Kormos: But isn't the corollary of that as much a problem, and that is the sort of Disney-nurtured anthropomorphism, the fact that people don't view dogs as dogs; they view them as other people?

Mr. O'Sullivan: There's no question. One of the dogs I have is a Siberian husky from a rescue, and I can tell

you that they are highly intelligent animals, they're very affectionate, but on any given day they couldn't care less what you'd like them to do. When they produced the *Snow Dogs* movie—like the *Dalmatian* one—everybody went out and got Siberian huskies. This is not a type of dog that—

Mr. Kormos: So that dog's not really kissing me; it's just ecstatic about the remnants of food that it can smell after I've had lunch.

Mr. O'Sullivan: As a matter of fact, a mother wolf goes out on a hunt, she comes back, and when the wolf cubs lick the side of her mouth, it's a trigger to have her regurgitate the food so they can eat it.

Mr. Kormos: It's even worse than I thought. We'll have none of that, if that's the reason.

The Chair: On that appetizing note, Mr. Zimmer.

Mr. Zimmer: You've been in the animal care business for many, many years—the humane society world and so on. The consequences of a pit bull attack on a victim are, for the most part, qualitatively different or qualitatively more severe than—you used the example—the bite that you got from your dog. Would you agree with that?

Mr. O'Sullivan: No. As a matter of fact, a chihuahua is just as dangerous to a baby who's crawling along the floor as a pit bull is.

Mr. Zimmer: On the street, are you saying that an attack by a chihuahua is not qualitatively different from an attack by a pit bull?

Mr. O'Sullivan: That's correct.

Mr. Zimmer: Thank you.

The Chair: I'd like to thank you very much for coming in today and certainly for your very well thought through and very well expressed brief today.

MICHELLE JOHNSTON

The Chair: Our next deputant, Michelle Johnston, is available now on teleconference.

Ms. Johnston, can you hear us?

Dr. Michelle Johnston: Yes, I can.

The Chair: OK. Ms. Johnston, first of all, welcome to the committee hearings on Bill 132. You're now speaking to all of the committee members present. You have 10 minutes. You can use your 10 minutes in any way you wish. You can speak for the whole 10 or you can speak for part of that. If you leave time, then the parties have an opportunity to ask you questions. Please start by stating your name clearly for Hansard.

Dr. Johnston: Thank you. My name is Michelle Johnston. I'm a scientist with the National Research Council. I'm not an expert on dogs, but do have some experiences that I'd like to share with you. Really, I just want to share with you the three incidents I've had with dogs within the last three or four years. I'm going to recount them to you, and you can make of it what you want.

In 2001, I was walking in a rural area when two 70-pound dogs left their yard to circle and attack my leashed

dog. My screaming brought the female owner right out of her house. She was calling her dogs back, but they didn't respond. She basically had to come out and pull her dogs off mine and away from me. We went to court on that. The judge ordered that the vet bills that I had be paid; they never were. He ordered that their underground electric fence be fixed, which is something that they had. Was it functional? I have no idea, because now I avoid that area. That's one area where I just don't go.

Last winter, I was walking my dog. I crossed to the other side of the street. I got on the sidewalk, but I wanted to avoid the owner and what I thought was a pit bull. As I walked to the opposite side of the street, his dog saw us and jumped a two-foot-high snowbank on a retractable leash and ran out into traffic, barking and lunging at my dog and myself. The traffic had to swerve to avoid that dog. The owner tried to jerk it back with the retractable leash—fortunately, he was on a leash. That's my second one.

The third one is certainly the worst. In September 2003 I was standing on a street corner with my leashed dog waiting to cross the street. A woman was passing behind me. She had a leashed pit bull in one hand and a coffee in the other. The dog broke free. It lunged at my dog, snapping and growling. It wrapped me up in its leash and dragged me into traffic. I was awfully hurt in the traffic. When I struggled to get up from the ground, the pit bull's snapping face was right there. I won't repeat the foul language the owner used against me, but two unrelated witnesses saw the incident from across the street. One was eating her lunch; the other was pumping gas. He called the police. They came. I noticed another one, a man who was pumping gas. He told me later—he actually lives in the building where I live—that he followed this lady from his home and tried to find out where she lived. But when she realized that she was being followed, she ducked in somewhere.

One year later I found out where the woman lives, and her dog, but the 90-day statute of limitations for dog-related attacks had expired, of course, with the bylaw, so there's no ability—nothing to be done or that can be done. So that's an area that I am now going to avoid too. I do not go there.

In the time since 2003, I've noticed there are about 10 different pit bulls living in a two-block radius of my house. One in particular really, really frightens me. She had two unneutered male pit bulls on one leash. So she had those leashes with their collars and the colourful catch, but there was actually only one leash. So if one broke free, the other would be right behind it.

It's getting worse, is what I'm thinking. I'll just recite one more incident, and that's one that I was not involved with, but there was somebody here at work who was. It certainly is the worst. Basically, he's a colleague here. His 16-year-old son was out walking with their small dog in the neighbourhood when a Rottweiler bolted from a hole in his fenced yard to attack his son and his little dog. Before the Rottweiler's jaws clamped around that small dog, his son intervened. When the small dog ran home

alone, his father realized that something was wrong, so his father ran out to find his son. He found him, all right. He was down on the sidewalk. He was wrestling with this dog, with bleeding hands and a bleeding face. His son now has facial scarring, not to mention the trauma that he's got over Rottweilers and large dogs.

What happened to that case? The judge penalized the dog owner \$250. He ordered that the guy fix the hole in his fence. He ordered the dog to be muzzled and leashed at all times. Was it enforced? I asked my colleague this morning. He said, "I don't know, because I avoid that area." So the circles that we as responsible people are travelling in are really being restricted. I feel like a hostage when I go to walk in my own neighbourhood. I carry pepper spray every time I go for a walk, and I'm always trying to be alert and ready for getting these dog attacks. I feel like a victim in my own neighbourhood.

What are the solutions? Well, I don't think they are existing laws. Even if they were enforced, they wouldn't correct the problem. Muzzling potentially dangerous dogs: I don't really think that's quite the answer either. The owner of the pit bull that attacked me: I know her neighbour, and he told me that she would not obey that law if it were passed. I asked a veterinarian if he recommended muzzling dogs when they walk in. He said, "I don't recommend it, because when dogs are muzzled, that interferes with their ability to pant," so he didn't recommend exercising dogs with muzzles.

Then I have to wonder, well, are people going to exercise these dogs anyway, if they have muzzles on them? I walk many times in Gatineau Park—it's a nice place to walk and hike for hours—and I've not yet ever seen a pit bull on one of these hikes or otherwise in winter. When I'm out walking day or night in the neighbourhood, I don't see pit bulls. I don't see people out there walking their dogs, yet I see them a lot in summer. So are these dogs ever exercised? Is that why they're so aggressive?

I guess I would say it would be nice if we could rely on educating dog owners to fix the problem, but I don't think we can. I was seriously injured in a head-on collision with a drunk driver. He had multiple convictions. My experience has shown me that, I'm sorry, teaching does not work. Education doesn't really work in this case. Prosecuting people after they or their dogs commit heinous acts isn't satisfactory either. The laws need to be stronger, and they've got to be enforced.

I'll say that I realize that all dogs are inherently unpredictable; I see it in my own dog. But the power and tenacity of pit bulls and dogs like them make them deadly. The pepper spray that I carry with me seems farcical when I consider what I'm up against. For that reason, I feel that we should ban pit bulls. It's been shown that it's worked and been effective in Winnipeg, Kitchener and Waterloo.

If there are any questions, I'd be happy to answer.

1600

The Chair: Thank you very much for the time you've taken and for your deputation today. We have about a minute per party. We'll begin with Mr. Kormos.

Mr. Kormos: No, thanks, Chair.

The Chair: Mr. Zimmer?

Mr. Zimmer: No, thank you.

The Chair: Ms. Munro?

Mrs. Munro: Thank you for bringing your personal experiences to the attention of the committee. I guess my reaction to this is that I'm aghast, I think is a fair way to say it, at the experiences you've had, and I can certainly appreciate your frustration at the limitations of dog owners' liability.

As a member of the opposition, I introduced a private member's bill with the intention of looking at how we deal with dangerous dogs and the potential for the courts to make a decision to ban ownership. But I think your experiences, personally and otherwise, demonstrate to all of us here on the committee how important it is that we look at this kind of problem and provide a legislative framework that's going to work for everybody.

Dr. Johnston: I agree.

The Chair: Ms. Johnston, I want to thank you very much for taking the time to contact us today, and certainly for your deputation this afternoon.

ROTTWEILER CLUB OF CANADA

The Chair: Do we have a representative in the room from the Rottweiler Club of Canada? OK, please come forward.

Welcome to our hearings this afternoon. If you've been here for a little while, and I think you have, you have the general ground rules. You've got 15 minutes. You can use all of it or part of it. If you don't use all your time, it will leave some for the different parties to ask questions of you. Please begin by stating your name for Hansard.

Ms. Tricia Barrett: My name is Tricia Barrett, and I am the Ontario director for the Rottweiler Club of Canada. I'm also the chairperson of their breed-specific legislation, or BSL, committee.

First of all, I'd like to thank the committee for the opportunity to present before you today. Our national breed club felt the need to have our club's voices heard from across the country at this meeting today. We are opposed to Bill 132. It is misguided and ill-conceived.

In the report I have provided to you today, you will find the inquest recommendations in the death of Courtney Trempe. There were 36 recommendations, and as we approach the seven-year anniversary of Courtney's death, I am saddened that none of the recommendations has been implemented. Even in the proposed Bill 132, none of the recommendations has been met in the spirit of the inquest. May I ask why?

There is a massive amount of information available on effective legislation. Why was it not utilized when this bill was drafted? Surely, if the public had access to these documents, the government did as well.

The Canadian study on the feasibility and implications of a breed-specific animal services bylaw condemns BSL as a viable option. You will find this report in your pack-ages as well.

There have been several misleading and inaccurate claims during this campaign. The distinction must be made between consultation and endorsement. "Consultation" is defined as a conference at which advice is given or views are exchanged. "Endorsement" is defined as official approval, sanction or support. Several times since August 30, Michael Bryant, our Attorney General, has been quoted as saying he consulted with the experts. Consultation is only a discussion. At no point does it imply endorsement or approval, as he suggests. In fact, I would even question the word "consultation," as it seems there was no exchange on the Attorney General's part.

The fact is, there is not one single expert organization that endorses this bill. As you have already heard today and will continue to hear again and again throughout these hearings, responsible ownership is the single most influential component of any canine safety initiative. I will spare you the listing of each and every organization that is adamantly against this bill; all that needs to be done is to read the list of presenters at these hearings. Each and every expert group and organization will tell you the same thing: No to Bill 132.

I must also reference the mysterious 5,000 e-mails that Mr. Bryant received in support of this ban; I also know that he received many e-mails against this bill, and would question those numbers. Why have they not been assessed by an independent audit?

Apart from that, I would ask that the committee listen to the professional opinions of the experts presenting to you today and throughout these hearings. These people have come before you, many from great distances, to give you their educated opinions, rather than being based on impressions or perceptions. There are no expert studies that support Mr. Bryant's claims of increased safety. In fact, areas that have implemented breed-specific legislation have found that their bite numbers went up after implementation, therefore decreasing public safety. The Winnipeg story is an example of this.

Many areas are now rescinding their BSL laws in favour of responsible ownership legislation that requires a high standard of ownership by all dog owners, regardless of breed. In fact, there are many states in the US that have now outlawed BSL altogether. Most recently, New Brunswick defeated a proposal for breed-specific legislation at the provincial level:

"A committee of MLAs has agreed that dangerous dogs should not be regulated by breed and owners should take the blame if their dog attacks someone. Committee member Jody Carr says it's more important to educate owners on the potential liability of dogs and preventing accidents.

"Carr says the committee concluded it would be a mistake to concentrate on particular breeds and will recommend that owners of any kind of dog will be penalized if their dog bites someone."

In England, they had implemented BSL. It was found to be expensive, time-consuming and impossible to enforce. They have since dropped all breed-specific legislation in favour of more deed-specific.

Here we have both national and provincial examples that have been defeated as plausible solutions to canine-related injuries. This must be acknowledged and considered in how Ontario should proceed.

During a meeting I had with the Honourable Gerard Kennedy, he made a very interesting statement: "We cannot legislate social behaviour." This was in response to my statements regarding responsible ownership of dogs. Responsibly owned, no dog would be given the opportunity to cause injury. I would argue quite adamantly that all legislation is intended to control and mould social behaviour: what is and is not acceptable in society, what you may and may not do that affects your fellow man.

I personally own a Rottweiler. He's a large male, 115 pounds, fully licensed here in Toronto. He's registered with the American and Canadian kennel clubs. He is a Canadian champion. He has several temperament titles, a first-level obedience title and is currently trained to serve the public as a search-and-rescue dog. His training will be ongoing until the day he passes on.

How does this bill protect me, as a responsible dog owner, from the malicious reporting of possible menacing behaviour of my dog to the authorities? How does this bill allow for me and my dog to be assessed and found innocent? How will I be protected from further harassment? How do I know that my playing, frolicking dog won't somehow be misinterpreted as exhibiting menacing behaviour? Do I have your assurances, and what are they based upon?

There have already been many incidents of harassment, threats and assaults from self-imposed enforcers of this bill. People have been verbally and physically attacked, their dogs abused. Responsible dog owners have now had to put themselves at risk by walking at night, trying to avoid these confrontations. I cannot tell you the perils and how vulnerable we are now, walking alone on dark city streets and in parks. This has been affecting all dog owners due to the public erroneously identifying various breeds, my own dog included. This panic mentality has got to stop being encouraged by our government.

I must admit that I'm afraid. I'm afraid for my own personal safety and that of my beloved pet. I'm afraid of vigilante justice. I live in High Park because of its lovely, doggy-friendly nature, well-kept trails and friendly community. How can you possibly endorse a bill that will put me, my dog and the public at risk?

The most effective legislation model available to Canada is Calgary's. I have included a copy of it in your packages. Strict licensing and leash laws have decreased bite incidents across the board by 70%, in the face of a dog population which has doubled. Whereas Calgary has a 90% licensing compliance rate, Toronto pales by comparison, with a mere 10% to 15%.

1610

In a bill entitled "An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs," I am stunned that education has been ignored. In

your kits, you will find an article by Canada's own Dr. Stanley Coren, a professor of psychology at the University of British Columbia, author of many books on dog behaviour and television host of the series *Good Dog!* He has been recently quoted as saying, "Regardless of its breed, a well-socialized dog is unlikely to bite. Statistics show that simply taking a dog through a basic obedience class reduces the likelihood that it will bite by 90%, while giving one hour of instruction on 'bite-proofing' to children reduces the risk that they will be bitten by more than 80%. Combine both dog obedience and child education and you can reduce dog-bite injuries by 98% without" having to ban any specific breed of dog.

How can any proposal to increase public safety in relation to dogs possibly ignore these staggering statistics? I'm absolutely astonished. This one implementation alone, which is not covered by Bill 132, may save thousands of injuries. Which one is more financially feasible: educating owners and children or presiding over court cases and paying hospital fees?

The additions to the Dog Owners' Liability Act are premature. We are not actively policing our existing bylaws, yet we are blaming those bylaws as not being effective. Once seat belts were installed in cars, injuries did not decrease until wearing them was actually enforced.

When a dog running at large injures a person, why was it running at large? Every municipality has leash laws. So it is a failure in two parts: (1) the owner allowed the dog to run at large, and (2) law enforcement was not able to implement, maintain or enforce their leash law. If they, for some reason, were not able to enforce leash law, that must be reviewed. Are they understaffed? Are they underfunded? Are they overwhelmed? If so, then there is no sense in adding to their duties. Bill 132 is not a replacement of these current laws; it is an addition to the existing laws.

The following are my recommendations for changes to Bill 132.

Strike all references to "pit bull" or any other references to specific breeds being flagged within this legislation.

Strike the proposed text and replace it with that matching the Calgary law, which is much clearer in definition. From here forward, any section referring to a specific breed of dog be replaced with the following: "'Vicious dog' means any dog, whatever its age, whether on public or private property, which has, without provocation ..."—it's all in your package.

The entire section "Pit Bulls—Ban and Related Controls" should be stricken from the record completely.

"Search and seizure": The only person with a warrant who should be allowed to search and/or seize any animal should be written, as in paragraph 1 of section 12: "A police officer." Those in paragraphs 2, 3 and 4 may attend with the police officer, as stated above; however, they may not search or seize any animal unless accompanied by a police officer with that warrant. Replace any

references to any other title able to execute a seizure or warrant with "a police officer."

"Warrant to seize dog": This section is particularly troublesome as it does not outline any prior steps to a warrant being issued. An escalation of events must occur—warnings, hearings and/or orders to appear before a justice—before a warrant is issued.

Animals for Research Act: Any reference to the Animals for Research Act must be stricken. Simply, if an animal is deemed a vicious dog, it is not a candidate for research. Technicians work very closely with research animals, and therefore cannot be put at risk by a potentially dangerous animal. It should also be said that if this point is argued and the justification is made that the dogs are not vicious, then, again, they cannot be sent to research, as the only reason they would have been seized or deemed unadoptable would have been due to their questionable temperament. Therefore, the animal shouldn't have been seized and is adoptable. Obviously, if they are of a stable temperament, the scientific community would not accept them, thereby disproving the foundation of this bill.

"Seizure in public place," section 15: Replace any animal descriptions with the "vicious dog" section.

In "Necessary Force," section 16, match the phrasing in this section to that of subsection 13(4): "as are reasonably required to give effect to the safe and humane seizure of the dog." The phrase, "as much force as is necessary," is to be stricken.

"Delivery of seized dog to pound": Add "to which the dog will be maintained in good health until such time as the court may hear the case."

In conclusion, please do not endorse Bill 132. Yes, we need a change; however, it must be researched, endorsed, educated and supported.

The voters of Ontario are watching and listening very closely to these hearings. We want effective legislation. Should this bill not be altered responsibly and the recommendations of the experts not heard, our voices will be heard loud and clear at the next election.

Please listen to our expert organizations as they present to you throughout these hearings. They are more than willing to support the government in the definition, implementation and maintenance of responsible ownership legislation for everyone. Work to protect all victims. Work to protect all owners' rights. Thank you.

The Chair: Thank you very much. We've got time for perhaps one brief question from each party, and the rotation begins with the government.

Mr. Zimmer: I just want to point out this sort of slippery slope argument that banning pit bulls is the first step to banning everything else. Only pit bulls are banned. The only way you can get an additional ban is by changing the act. It's important to keep in mind that it can't be done by regulation or an informal way of enacting law. You realize that, do you?

Ms. Barrett: Of course. I also realize that—

Mr. Zimmer: You do realize that?

Ms. Barrett: Yes, I do. People have also mentioned, "Why are people so adamantly opposed to this?" It's because if you have a dog that has worked its way into your family and you love that dog beyond all reproach, you want to be able to replace that dog with the same type of dog. This bill takes that away from them, and that's not right. If they're responsibly owned, they should be allowed to keep them.

The Chair: Mr. Miller? Ms. Munro?

Mr. Miller: Thank you for your presentation today. I noticed you mentioned Calgary and you attached the bylaw from the city of Calgary to your presentation. I'd like to point out that I did try to get the director of animal and bylaw services for the city of Calgary invited to this committee this morning. Unfortunately, the government didn't support that, although the director will be making a written submission to the committee.

One of the things you mentioned that had to do with Calgary was that they have a much higher licensing rate. You said a 90% licensing rate. Can you expand on that and why that's been so successful in achieving the 70% reduction in dog bites they've achieved in Calgary?

Ms. Barrett: Simply, they police their laws, they police the licensing. Because they have the 90% compliance rate, they also have the funds generated by that compliance rate to thereby enforce. So they are enforcing responsible ownership, they are enforcing spay and neuter programs and they are enforcing licensing so that they have a very clear idea as to the animals that are actually present in their city. Here in Toronto we only have 10% to 15%, so we really have no clue about the densities of the dog population in our own city.

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: Be careful, because the legislation very clearly doesn't just ban pit bulls; it bans Staffordshire bull terriers, American Staffordshire terriers and American pit bull terriers. I'm reading now—and thank you, research, for getting us the material—the "Best Breeds for Children." Did you not get that? I thought you were working promptly. This is the University of Southampton Anthrozoology Institute's conclusions about the 10 best dogs for kids. Let's all be very careful, because this document, which was relied upon earlier, talks about different breeds of dogs as having different traits, different characteristics—some more suitable for children, some less suitable for children, and less suitable because they're inherently more unpredictable or how they react to certain things is more aggressive than how other breeds react to things. Is that a fair understanding?

Ms. Barrett: I would say it's fair. I haven't actually read the document.

Mr. Kormos: You haven't seen this document. This document talks about the Staffordshire bull terrier. Is that the one we were told was called the nanny dog?

Ms. Barrett: Yes, it is.

Mr. Kormos: OK; that's the nanny dog. Not the American Staffordshire terrier, but the Staffordshire bull terrier is the breed rated best with children, "despite their superficial similarity to the pit bull terrier." They don't

go on to explain that. They say, "despite their ... similarity." Is there an inference to be drawn from that observation?

Ms. Barrett: Simply that people need to also realize that if you would learn more about the particular breeds, you can't judge a breed by its cover. Just because they have a similar look doesn't mean they have the same temperament. There are a lot of breeds out there that look very similar, but if you get a miniature pinscher, it doesn't have the same temperament as a Doberman pinscher. It doesn't mean that it's better or worse; it's just different.

The Chair: Thank you very much for your time in coming in today and for your presentation before the committee.

1620

CANADIAN FEDERATION OF HUMANE SOCIETIES

The Chair: Our next deputation will also be by teleconference. It will be the Canadian Federation of Humane Societies, Shelagh MacDonald, program director. Ms. MacDonald, are you on the line?

Ms. Shelagh MacDonald: Yes, I am.

The Chair: OK. Welcome to the committee hearings on Bill 132. So that you know, you will have 15 minutes to talk with us today. You're speaking before the standing committee on the Legislative Assembly at Queen's Park. You can use all of the 15 minutes for your deputation if you wish, or if you leave time remaining, then the time will be divided among the parties, who can then ask you some questions.

Ms. MacDonald: Sure. I will leave time.

The Chair: Please begin by clearly stating your name for Hansard, and the time is yours.

Ms. MacDonald: Shelagh MacDonald.

The Chair: Go ahead.

Ms. MacDonald: Thank you very much for the opportunity to speak to you today on this important, rather emotionally charged issue. We commend the Ontario government for undertaking the task of improving our laws regarding dangerous dogs.

The Canadian Federation of Humane Societies was formed in 1957 to represent humane societies across Canada on national animal welfare issues relating to farm animals, pets, research, and wildlife.

The CFHS is also a founding member of the National Companion Animal Coalition, a group that is working on companion animal issues of common interest. Other members of that coalition are the Canadian Veterinary Medical Association, the Canadian Kennel Club and the Pet Industry Joint Advisory Council, with Agriculture and Agri-Food Canada being an observer member of that group. I'll refer to that group again.

The coalition has recently developed a statement outlining the reasons why breed bans don't generally work, and suggesting alternatives to that approach. I'm afraid I meant to include that with my presentation. I've

just e-mailed it. So you should be receiving that shortly. The coalition has also developed, a couple of years ago, a set of recommended animal control bylaws for municipalities that has been very well received by Canadian municipalities and has a good section on dangerous dogs.

For the sake of public safety, it is abundantly clear that better laws are needed to address the problem of aggressive dogs and to introduce severe consequences for their owners. The CFHS promotes healthy dog-owner relationships and condemns the keeping of dogs that pose a threat to their community.

In the right hands, with caring and conscientious owners, dogs make wonderful companions that enrich our lives in many ways. However, there are very few restrictions on breeding, selling or training of dogs, and poor breeders who breed indiscriminately and sell to anyone are part of the problem. Also, far too many people acquire dogs, having no idea what is involved in raising them to be good citizens in their community, and this can lead to problems.

Many tragic attacks on children result from inadequate supervision of children around dogs. Dog owners need to know that even the friendliest dogs must be supervised when children are around. Young children may inadvertently scare or annoy dogs, and many dogs are wary and unsure of children. The National Companion Animal Coalition launched a Web site, dogsandkids.ca, to help educate children on how to behave around dogs.

First of all, the CFHS acknowledges the horrific nature of the dog attacks that we all have heard about in the news, and we express our sympathy to the victims and their families. The CFHS also acknowledges that different breeds have inherently different traits that should not be ignored in this debate. Owners who choose breeds or mixes of breeds that have been historically used for fighting or guarding must understand and appropriately manage the potential risks associated with these dogs. The fact that pit bulls were selectively bred as powerful, tenacious fighting dogs should not be swept under the carpet. Similar traits exist in other breeds as well.

However, the CFHS does not support breed bans. Such legislation is difficult to enforce, as there is no objective method of reliably identifying breeds or breed mixes. In addition, such bans will exclude potentially dangerous dogs of other breeds and will ban others that are not dangerous, thereby creating potential legal problems even.

Owners of any breed of dog must understand that any dog can bite and that no dog is completely trustworthy. Dangerous temperament and behaviour are products of many factors other than just breed. These factors include poor breeding practices, inadequate socialization and training, health or behavioural issues, inadequate supervision and/or control of the dog.

The CFHS supports responsible pet ownership as a means of reducing the number of dog bites. For example, owners should choose a breed or breed cross appropriate to their lifestyle, experience and capability. All owners

should ensure that their dogs receive at least basic obedience training, as well as appropriate exercise, socialization and mental stimulation. Owners must also provide their dogs with basic necessities and medical care, spay and neuter their pets and provide safeguards for the public. Wherever possible, legislation should encourage and reward responsible pet ownership. Finally, the CFHS supports legislation that holds dog owners accountable for any damage their pets do to people, property or other animals. In severe cases, owners should be held criminally responsible.

Here are our comments specific to the proposed legislation that you're looking at today.

The CFHS applauds the Ontario government for including appropriate fines and/or jail terms that could act as a significant deterrent to dog owners. We also support the inclusion of the clause, "behaved in a manner that poses a menace to the safety of persons or domestic animals," and another clause, "there is reason to believe that the dog may cause harm to a person or domestic animal." Such clauses allow for action to be taken before a bite incident occurs, which is a common criticism of regulation approaches that only punish the dog once it has bitten someone. So those were some good approaches there.

In the clause regarding a dog that "has bitten or attacked a person or domestic animal," we suggest adding the words "without provocation." An incident may be "justified"—and I'll put that word "justified" in quotes—in circumstances where a dog has been severely provoked, teased or maltreated.

The CFHS recommends the addition of a requirement that dogs deemed dangerous or restricted must be spayed or neutered. Licensing laws should include significant incentives for dog owners to spay or neuter their dog. There are certainly statistics that show that unneutered males, particularly, are far more likely to bite than neutered males.

We encourage the Ontario government to consider further provisions that are being considered in New Brunswick, for example, and others that have been recommended by juries and experts involved in inquests into dog bite fatalities. New Brunswick MLA Kelly Lamrock, who had originally proposed a breed-ban approach, promised to draft new legislation that would eliminate the allowance of the first-bite-free rule, include provisions whereby dog owners with repeat convictions or attacks permanently lose the right to own a dog, introduce licensing and codes or regulations for breeders and improve enforcement and education.

One of the most important factors that is missing in the quest to reduce dog bites is a centralized database to collect information about dog bites. Such a database was recommended by the jury of the 1998 inquest into the death of eight-year-old Courtney Trempe, who was killed by a neighbour's bull mastiff in Stouffville, Ontario. The jury noted this should include a standardized format and compulsory requirement for the reporting of dog bites. This might be done through the Ministry of Health

because of the health risk and cost, or it could be done through some other appropriate agency, but this is a recommendation that has been made numerous times. The same recommendation was made at the inquest into the death of four-year-old James Waddell in New Brunswick. Information collected in this database should include the circumstances surrounding the bite incident, the breed, sex and reproductive status of the dog and its relationship to the victim. This information would help in developing effective solutions to the dog-bite problem.

Another important recommendation was made by the jury of the Courtney Trempe inquest. The jury recommended that the provincial government consider a certification process for breeders, trainers and behaviourists as a requirement for obtaining a business licence. This will allow the public a level of confidence when choosing a breeder, trainer or therapist and provide for consistency of standards and techniques. This committee may want to review the licensing system for breeders currently being launched in the province of Quebec.

I hope our input will be helpful to the committee in addressing this difficult issue. If we can provide further information or documentation, please don't hesitate to ask. We wish you success in developing reasonable and effective laws that will reduce dog bite incidents in Ontario.

The Chair: Thank you very much taking the time today to give your deputation to us by teleconference. We've got a few minutes for questions to you, about a minute and a half per party, beginning with the PCs.

Mr. Miller: Thank you very much for your presentation today. You make reference to licensing laws that should include significant incentives for dog owners to spay or neuter their dogs. Have you suggestions on how more dogs can be encouraged to be licensed?

Ms. MacDonald: The city of Calgary provides probably the best example of that. They have an 80% to 85% compliance rate with licensing, I think in large part because they do active enforcement. I believe in the summer they hire summer students to actually go around door to door, and the fine for not having your licence is \$250. I'm not aware of other municipalities, or they're very few, that have such a high penalty. So I think that's why they get good enforcement. It's a good question, because the bottom line to enforcing any dog regulations is having the dogs licensed.

1630

Mr. Miller: How long has Calgary's bylaw been in effect?

Ms. MacDonald: Oh, boy, I'm thinking at least 10 years. Well, I would say that it's going on 10 years—quite a long time. They have a very successful system there.

Mr. Miller: Of all the municipal jurisdictions in Canada, would Calgary be one of the most successful?

Ms. MacDonald: It would. It's definitely the one that stands out to me, particularly with regard to dog regulations.

Mr. Kormos: What do you know about the jurisdictions—municipal, obviously, and perhaps national if we're talking about England—that have incorporated breed-specific bans? My question to you is, what do you understand—look, these are not inherently irresponsible people.

Ms. MacDonald: That's right.

Mr. Kormos: So what is their motivation? They're not stupid people; I'm prepared to say that. Why have they opted for breed-specific bans when all of the data, research, studies and empirical evidence denies support to breed-specific bans?

Ms. MacDonald: I have to say that I think a lot of it is an emotional decision. As a reasonable person myself, I can understand that emotional decision when we read about the horrible attacks that have happened. There's a tendency to think we can solve the problem by not having any more of those dogs around. I think a lot of it is an emotional decision, perhaps demanded by the public in response to some of those awful cases.

But you're right; in most cases, I don't think they have been successful. They'll often say, "Well, we don't have any more pit bull incidents," which really doesn't say anything. The question is, do they still have dog-bite incidents?

Mr. Zimmer: Even before we got talking about this legislation and the bill was introduced, is it your sense that the pit bull population in humane society shelters was more significant than other dog populations?

Ms. MacDonald: I don't really have any data to back that up.

Mr. Zimmer: What's your anecdotal answer, as an experience?

Ms. MacDonald: I would say there'd be a fair number of them in humane societies for a couple of reasons: They can be more difficult to home once they're there, and people have issues with them in the community that may cause the owners to give them up, perhaps more so than other dogs. Those could be some of the things that contribute to them getting there in the first place.

Mr. Zimmer: Historically, what happens, then, to those pit bulls that humane societies take in that they can't relocate?

Ms. MacDonald: Every humane society makes their own rules. We don't govern them in any way. I believe some humane societies have a policy where they do not adopt out pit bulls.

Mr. Zimmer: What do they do with them?

Ms. MacDonald: They would probably euthanize them. I think for the most part, though, all of the larger, urban humane societies now have temperament evaluation programs. They would put the dog through the temperament evaluation program and determine the adoptability of that dog, as they would for any other dog.

Mr. Zimmer: What happens if the humane society won't take the dog? What happens to those dogs when people bring them in to the humane society to drop them off?

Ms. MacDonald: Humane societies are open-door facilities, so they don't turn any animals away at the door. They would take them in to give them a chance. If they deem that the animal is not adoptable due to health or temperament reasons, then they would humanely euthanize the animal. If they have the resources and they think the animal can be rehabilitated with some work, they might do that.

Mr. Zimmer: Do you have any sense of the percentage of successful adoptions or, to use your expression, rehabilitations?

Ms. MacDonald: I'm afraid I don't have any information on that.

Mr. Zimmer: Anecdotally?

Ms. MacDonald: I really couldn't tell you; I'm sorry.

The Chair: That concludes the time we have for you. Thank you again for connecting with us by teleconference.

The Chair: Is there a representative in the room from the Ottawa Kennel Club?

Mr. Kormos: Chair, while these people are seating themselves, may I address a request to legislative research, please?

The Chair: Absolutely.

Mr. Kormos: Mr. Zimmer has, not inappropriately, raised several times today the issue of there being more pit bulls proportionately, if you will, in humane society shelters and we've had some difficulty getting the rationale. I don't know whether these organizations collect data on why the dogs are there, so I'm wondering if legislative research might try contacting some major humane societies to see if we can get some sense of why the pit bulls, in contrast to other dogs, are there. One of my presumptions might be that it's a higher level of irresponsible owners who end up with their dogs at the humane society, so I put that to you. Again, appreciating there may not be hard data, but just contacting some of the major humane societies may give us a sense.

I appreciate whoever gave us the bundle of material, "Calgary vs. Winnipeg," along with the article based on the Southampton University's Anthrozoology Institute research. If I could—

The Chair: Concisely, please.

Mr. Kormos: What we've got is a magazine article that lists the top 10 for kids, but it indicates that there was a major publication, a canine character guide, which ranked breeds by certain traits, such as aggression, reactivity etc., by the Southampton University Anthrozoology Institute. We've got the magazine article about the top 10 for kids. If we could get the full study, that would be very helpful to us. Here is a university that has assessed characteristics and qualities, negative and positive, of breeds, presumably pit bulls included.

The Chair: Legislative research has recorded the request.

OTTAWA KENNEL CLUB

The Chair: I'd like to welcome you here for the last of our presentations. Everybody still looks wide awake

and bushy-tailed. If you've been here for a while, and you have—

Mr. Kormos: Poor choice of words.

The Chair: All right, withdrawn.

You have 15 minutes for your deputation. You may use all of it if you wish. If you leave any, we'll divide the time among the parties. Please begin by stating your names for Hansard.

Ms. Carol Broadhurst: Mr. Chairman, I thank you and the members of the standing committee of the Legislative Assembly for giving us this opportunity to speak on Bill 132. My name is Carol Broadhurst. I'm the president of the Ottawa Kennel Club, a life member of the Canadian Kennel Club and co-chair of Save the Children Canada Dog Show committee. Accompanying me today is Mr. Jim Osborne, who is vice-president of the club, and Mr. John Hodgkinson. Mr. Hodgkinson is a long-time member of the Ottawa Kennel Club and also a director of the Canadian Kennel Club for eastern Ontario.

Due to recent surgery, I was not certain whether I'd be able to make it. Consequently, I asked Mr. Hodgkinson to present the position of the Ottawa Kennel Club on Bill 132. Before I turn it over to John, allow me to tell you a little bit about who we are.

The Ottawa Kennel Club was established in 1887 and is the oldest active kennel club in Canada. Founded nearly 130 years ago, this club represents between 300 and 400 dog breeders and owners in the Ottawa Valley and eastern Ontario. The OKC organizes conformation dog shows, obedience trials and education seminars for its members and the general public. These events all contribute significantly to the local economy and enjoyment of community life.

In an ongoing program of contributing to the community, the Ottawa Kennel Club has provided scholarship funding to the University of Ottawa as well as contributing financially to organizations such as Canadian Guide Dogs for the Blind, the Heart and Stroke Foundation, the Canadian Cancer Society, the Children's Hospital of Eastern Ontario and the Canadian Diabetes Association. Through our volunteer telephone committee, our Web site and breeders' directory, we provide the community with information concerning the purchase, care and training of quality purebred dogs.

The Ottawa Kennel Club takes very seriously its role in supporting responsible dog ownership by offering training classes, educational seminars and venues to conduct internationally recognized therapy dog, temperament, and canine good neighbour testing, as well as conformation shows and obedience trials. We are very proud of the fact that we have recently instituted an international award for canine education.

Personally, as an aside, I am a Siberian husky owner and owner of two of the snow dogs. I've personally spent 400 hours doing community service and education in schools to teach the public and the children about the dogs. In our area, let me tell you, the sales are down in Siberians. It just goes to prove that education of the public does work.

We have a tremendous depth of experience in the Ottawa Kennel Club, and although not all of our members have academic degrees or titles, they do possess a tremendous depth of practical expertise in all aspects of dog husbandry and training.

Today, we are here to tell you that Bill 132 will not work and to request that you reconsider the approach reflected in Bill 132. With your permission, I would now like to ask Mr. Hodgkinson to explain our position.

1640

Mr. John Hodgkinson: Thank you for this opportunity to intervene on the proposed Bill 132.

The Ottawa Kennel Club welcomes all purebred dogs in our events. Sound temperament and responsible ownership are a cornerstone of club policy. We see the attack on certain breeds of dogs contained in Bill 132 to be unjustified, unnecessary and unfair.

The problems with this legislation include: Difficulty in identifying the pit bull; breed bans do not make for public safety; breed bans have proved ineffective and extremely costly where they have been tried; focus on breeds does not factor in irresponsible or criminal owners; bans encourage harassment of responsible dog owners by vigilantes; and breed bans are unfair to responsible owners.

Identification: Bill 132 singles out dogs based upon their genetic background. This brings up the first flaw in the legislation, the definition of "pit bull." The term "pit bull" is an emotive phrase that, with media publicity, has caught the public's attention. The drafters of this bill could not define a pit bull for inclusion in the bill since a pit bull is not a breed but a mongrel. The bill therefore includes descriptions of pure breeds to illustrate the type of dog the minister wants to ban. Finally, in order to ensure the net is wide, a catch-all clause is included to cover any dog that looks like those previously identified.

Even with this definition, it would be difficult to prove the breed in court. To get around this difficulty, the bill resorts to a reverse onus of proof. If an official authorized under the act states that your dog is a pit bull, he or she is not required to prove the assertion. A defendant must prove that the dog is not a pit bull. Many of these officials will have no specific training in breed recognition, and it can be expected that many pure and mixed-breed dogs will be wrongly identified as pit bulls.

The reverse onus of proof is not commonly included in the legislation, especially in cases where a conviction can lead to a large fine or time in prison. It may well be found unacceptable by the courts. Many recent examples of media reports of dog attacks have, when investigated, shown that the dogs involved were misidentified. Many pound officials and members of the public often find it very difficult to reliably identify various breeds.

Breed bans do not lead to public safety. By focusing on a specific breed instead of individual problem dogs and their owners, the legislation may infer that other breeds never bite, thus creating a false sense of security in the minds of the public. Other breeds can be trained to be dangerous and, if this bill becomes law, this is certainly what can be expected to happen.

Public education is required to promote safe interaction with dogs. That is why clubs like the Ottawa Kennel Club offer training and information to its members and to the general public.

The Canadian Kennel Club reports that only 31 Staffordshire bull terriers were registered in the whole of Canada between January and September 2004. You can calculate that this means about 40 a year. If they live an average of 10 years, you get an estimated total of 400 of the breed in Canada. Say one third of those lives in Ontario, in which case the breed is being banned to rid Ontario of about 135 dogs. Do you need to ban them? It would be better to focus on problem dogs and their owners rather than specific breeds.

Cost: The third serious problem with Bill 132 is that it will place a high cost on municipal governments, and on animal welfare organizations that will be asked to enforce the legislation and house the banned dogs. Where bans have been introduced, the cost of enforcement has been a major problem for those given the job.

Irresponsible owners: The fundamental flaw in Bill 132 is that it's based upon the assumption that dangerous dogs result from bad genetics and not from bad treatment or deliberate training. In reality, if the ban is imposed, a person who wants to own a dog that will scare or intimidate his neighbours will obtain and train a dog of another breed. This will inevitably lead to the banning of more and more breeds if the government continues down the road of breed discrimination.

Harassment of responsible owners: In addition to the prospect of misidentification by officials, vigilante action had started on the streets of Ontario cities even before the bill had finished second reading. Two examples: Joe Metcalf was walking his two boxer-Labrador-cross dogs when a woman attacked his dogs and hit one over the head with a cane, saying that the dogs should be muzzled in accordance with the Attorney General's legislation. The dogs needed veterinary treatment for cuts.

A few days later, as reported in the *Globe and Mail* on November 6, Darlene Reid was knocked over after her dogs had been kicked by two men who told her she had no right to take her killer dogs in public. Darlene, the report said, stated that her dogs stood behind her for protection and looked on in amazement. These are the kinds of excesses that result from moral panic, where the media develop a fear of a sudden danger to society. Authority figures claim to have the solution, then politicians are drawn into the movement and offer to save the day with legislation.

Quick legislative solutions to social problems are seldom effective. In the case of breed-specific legislation, many knowledgeable organizations are opposed. The Ottawa Kennel Club, along with many other interested groups, asserts that breed bans do not work. We need dangerous dog legislation to deal with individual problem dogs and bad dog owners, regardless of breed.

Fairness: I have spent over 40 years involved with purebred dogs and over 30 years breeding spaniels. While my breed is not likely to be targeted by a ban, my

heart goes out to those honest and conscientious breeders who, over many years, have developed dogs of sound temperament and quality only to have their efforts threatened by this unfair legislation. Their numbers may not be large, but the hurt that will be caused is as great as it is unfair.

Please reconsider the main thrust of Bill 132 and change it to deal with dangerous dogs and their owners and not to punish the innocent. If you need expert help in developing dangerous dog legislation, there are several organizations that have prepared model legislation and would be very willing to share their expertise. The Ottawa Kennel Club would be willing to contribute to developing and supporting sound legislation that focuses on the behaviour of individual dogs and their owners. Unfortunately, the bill before us today does not meet these criteria.

Mr. Chairman, I thank you and the members of your committee for listening to us.

The Chair: Thank you very much, and thank you for staying all the way to the end of our deputations. We do have a little bit of time; it allows each party about a minute and a half to ask you a question. The rotation will begin with Mr. Kormos.

Mr. Kormos: Earlier today, on at least one occasion, there was advocacy for tough Criminal Code legislation—not provincial offences legislation but Criminal Code legislation—that would attach a criminal offence, the misconduct done by the dog, to the owner of that dog as a way of real deterrence, as a way of making people think twice before they buy a dog that is bred to be more vicious than others, or before they raise a dog to be vicious, or for people who are simply careless about how their dog is trained or not trained, neutered/spayed or not neutered/spayed. What do you say to that? What do you say to the need for Criminal Code legislation that sends people to jail, corresponding to the degree of harm that their dog does to an innocent victim or to any victim?

Ms. Broadhurst: I think it's a good idea, but also, why are we not rewarding good dog owners? There is a method of rewarding good dog owners for what they're doing, maybe consideration in their policy for licensing if they provide temperament testing, obedience training, canine good neighbour testing—some of the things that these people are doing to show that they do have a good dog. This way it would be a positive thing, rather than taking the negative.

1650

Mr. Kormos: It was suggested earlier, for instance, that people who spay or neuter their dog shouldn't have to pay for a tag, but why not—

Ms. Broadhurst: This is a way of showing—

Mr. Kormos: I hear that, but if you're serious about spaying and neutering as a prerequisite to folks like me owning a dog, why don't you make it a law that if my dog isn't spayed or neutered within the appropriate time, bingo, I've committed an offence. Never mind free licence tags, because if I've got to pay 50 bucks, then I'm buying a licence for a dog that can go out there and breed its brains out, so to speak.

Ms. Broadhurst: We're looking for spaying and neutering for population control. We're looking for the rabies tags for disease control. Now, if we look for something like an obedience course or canine good neighbour testing, then you're looking at temperament, and that's really what the issue is.

Mr. Zimmer: The gist of your comments is that there is no expert in animal behaviour who supports the pit bull ban. Let me just put this proposition to you: Professor Alan Beck, who's a full professor and director of the Center for the Human-Animal Bond, Purdue University School of Veterinary Medicine, has done a lot of study on the dangers of pit bulls. He's an expert in the area. Professor Beck made these two findings: He said that, based on all of his studies, he finds that pit bull attacks are disproportionate to their numbers and that the social fear in the public is reasonable, given the ferocity of pit bull attacks. He believes that the legislation we're proposing here is balanced and provides a realistic and balanced solution to a very real problem. What do you have to say about Professor Beck?

Mr. Hodgkinson: I find his comments rather surprising. They seem to go against most other statistics on dog bites, which are not very well recorded. I think it's evident that the Ontario government has never made any effort to obtain statistics on dog bites in Ontario. Unfortunately, that's true of many of the jurisdictions across North America and possibly elsewhere. I think that in the absence of statistics, it's quite possible that somebody who has focused in on one breed would certainly get a higher proportion of reports on that breed than a general survey which wasn't started off with a particular aim in mind.

Mr. Zimmer: Have you read Professor Beck's material?

Mr. Hodgkinson: No, I haven't, and so I find it hard to comment and answer your question directly.

Ms. Broadhurst: He's only one of many people who have given their opinion. There are a lot more who are on the other side.

Mrs. Munro: I think my comment follows from the discussion that you've just had. I'm looking at page 8 of your presentation, and I was struck by something that I think is true, and that is where you say, "In reality, if the ban is imposed, a person who wants to own a dog that will scare or intimidate his neighbours will obtain and train a dog of another breed."

I think perhaps you inadvertently answered the question that was being raised by Mr. Zimmer. What we're talking about here in trying to get a handle on the question of the statistical data analysis and things like that—I have to say that throughout the day, we have had

many people who have identified flaws in representing the type, because it's not a breed. We have seen and heard of many of these studies. But I think the most important thing is what you say here, that when you then have people who choose to have a dog that looks like a particular style of dog, that is the issue. Then, with a ban, as you point out, that individual will move on. Could you give us any inkling as to the potential of moving on if this bill were to carry through?

The Chair: And a concise one.

Ms. Broadhurst: I think we have a history here. I think it used to be German shepherds, then it went to Dobermans, then it went to Rottweilers, and now we're on to pit bulls, simply. From pit bulls, we'll go on to something else.

Mrs. Munro: Do we have more on the horizon?

Ms. Broadhurst: Well, obviously. There are a lot of breeds out there or a lot of crossbreeds.

Mr. Jim Osborne: Mr. Chair—

The Chair: You're going to get the last word this afternoon.

Mr. Osborne: Yes. Just to complete the question that was asked by Mr. Zimmer, the Ottawa Kennel Club does not see this bill as being a well-rounded approach to the reduction of dog bites. We would assume that, after consideration, your committee would look at means to control responsible ownership and training of dogs, such that they are good citizens.

The Chair: Thank you very much. While you're sitting there, through you to the more than two dozen deputants today, I want to thank you all for bringing to us your advice, which is sincere, thoughtful and incisive. The suggestions that you've made to this committee, and therefore to the Ontario Legislative Assembly, were all very well-thought-through ones, ones in which you passionately believe. I also want to thank those of you who have braved the weather to sit very attentively today through these hearings, many of you who didn't make a deputation, and to show the depth of your sincerity in this particular issue.

Mr. Kormos: On a point of order, Mr. Chair: To poor, beleaguered, underpaid, overworked Mr. Kaye—but Mr. Zimmer's going to help you on this one. We need this Professor Beck report now, the full report, of course. It ensures that Professor Beck is not a professor of home economics or some such thing. I don't know the man or woman.

The Chair: These hearings will resume on January 27 in Barrie. Our proceedings for this afternoon are concluded. We are adjourned.

The committee adjourned at 1656.

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Mr. David Zimmer (Willowdale L)

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Mrs. Julia Munro (York North / York-Nord PC)

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Jeudi 27 janvier 2005

Standing committee on the Legislative Assembly

Public Safety Related to Dogs
Statute Law Amendment Act,
2005

Comité permanent de l'Assemblée législative

Loi de 2005 modifiant des lois
en ce qui concerne la sécurité
publique relative aux chiens

Chair: Bob Delaney
Clerk: Douglas Arnott

Président : Bob Delaney
Greffier : Douglas Arnott



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 27 January 2005

Jeudi 27 janvier 2005

*The committee met at 0958 in the Holiday Inn, Barrie.*PUBLIC SAFETY RELATED TO DOGS
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI CONCERNE LA SÉCURITÉ
PUBLIQUE RELATIVE AUX CHIENS

Consideration of Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act / Projet de loi 132, Loi modifiant la Loi sur la responsabilité des propriétaires de chiens pour accroître la sécurité publique relativement aux chiens, y compris les pit-bulls, et apportant des modifications connexes à la Loi sur les animaux destinés à la recherche.

The Chair (Mr. Bob Delaney): Good morning, ladies and gentlemen, committee members. Welcome to this hearing on Bill 132, an act to increase public safety related to dogs. This is the standing committee on the Legislative Assembly. We will be conducting hearings through the day today.

AMERICAN VETERINARY
MEDICAL ASSOCIATION

The Chair: As our first deputant, is there a representative present of the American Veterinary Medical Association? Please come forward.

Good morning. The procedure is really very simple and very informal. You have 15 minutes for your deputation this morning as an organization. Individuals have 10 minutes. What I'd like you to do is begin by stating your name for Hansard. The time is yours, and welcome to the committee.

Dr. Bonnie Beaver: My name is Bonnie Beaver. I am a veterinarian. I am a board-certified veterinary animal behaviourist. I'm a professor at Texas A&M University, and I chaired the Task Force on Canine Aggression and Human-Canine Interactions for the American Veterinary Medical Association.

My dog is a Welsh corgi. I have not had what you're calling a pit bull, so I have no dog in this fight, so to speak. However, I certainly have a concern about public health and animal welfare, and that's the reason I asked to address this body. I do have several colleagues who

have dogs that you're calling pit bulls, so I am certainly very familiar with these types of dogs.

Dog bites are the number one public health problem in the United States. We have four million to five million people bitten every year. About 10% of them will require medical attention, about 1% of them will have to be hospitalized and, tragically, there are between 15 and 20 deaths every year. We also know, tragically, that about 50% of the children in our country are bitten before the age of 18. So this is a public health concern. I want to commend you as leaders in the provincial Legislature on your concern for public health relative to dog bites, because it is a problem.

We want to decrease the incidence of bites—that's important—but as long as dogs and people live together, we can never totally eliminate dog bites as a problem. We do, however, want to be fair to the dogs and to their owners in any method that's used to decrease these bites.

There is a tendency to ban breeds as a result of a severe tragedy. It is a need to react. Unfortunately, it only causes a reaction; it does not affect the incidence of dog bites. Multiple scientific studies have shown that dog bite rates are not decreased by breed-specific legislation; they are simply a reaction. Why? There are several reasons for that. First of all, a dog's tendency to bite is governed by five things. The first is heredity, but the other four are owner- and victim-related. They include early experience of the dog, later socialization and training—or lack thereof—the health of the animal and the victim's behaviour. So more appropriately, dog bites are really an owner and victim problem, not a dog problem.

Dog breed data are terribly inaccurate. Most data studies come from media reports, and the media is extremely biased in what they report. They're very quick to report a dog as a pit bull, but the number four dog bite problem in Canada is from golden retrievers. That doesn't show up in the media on page 1.

Dog breed identification is extremely problematic because dogs are often identified as purebred, especially by the media, and that's where data are taken from, when in fact they are not purebred. I do commend Canada for having the requirement of being chipped or tattooed to prove purebred status.

Follow-up studies showing that most of the incidences are purebred are wrong. They are in fact not purebred; they are mixed. Going back to the literature—the newspaper reports—we have had "pit bulls" that are in fact pugs, boxers or bull mastiffs.

It's also concerning that there are a number of dogs that are not included on that list if this truly is an effort to decrease dog bite incidents. The number one biting dog in Canada is the German shepherd. That is not on the list. The number two dogs are Rottweilers and cocker spaniels. Those are not on the list. What about the Presa Canario? That's a pit-bull-looking breed. And what about dogs like the various mastiffs?

The definition of pit bull is not a very good one because pit bulls are not a breed, and what is outlined in the proposed bill is very incomplete as far as physical description. If you cross a Rottweiler with a yellow Labrador, you could get a dog that very easily would be called a pit bull. And what about mastiff crosses? Most of these dogs—greater than 50%—are in fact mixed breeds. Breeds cannot be separated in physiological, medical or genetic ways. We're working on the genetic component, but it's still a long way from having any meaningful value.

We also do not have good population data on biting dogs. If I took 10 Welsh corgis and had one bite, I would have the same bite ratio as if I took 1,000 Jack Russell terriers and we had 10 bites. You know which one the media would single out.

Licensing and registration data also do not give us an accurate picture of the number of dogs in various breeds.

It's also important to know that dog breed reputations change over time, as does their popularity. Cocker spaniels have been vicious, nice, vicious and nice, and now in Canada are not really very good. Dobermans have come and gone; Dalmatians have come and gone. So the law would constantly need modification in order to account for breed changes.

If you ask the postal workers, they're not concerned about the dogs you have identified as pit bulls; they're concerned about the little dogs. More workers' compensation claims come from little-dog bites than from big-dog bites.

The scientific literature on dog bites concludes that breeds vary over time, breeds most represented are popular at the time, and no one breed is represented in proportion to its actual population.

Contributing factors to dog bite incidences are related to owners. We find that dogs that have more likelihood to bite have no licensure, are not current on vaccinations, are not neutered, are male and are chained in the yard.

The victim's behaviour also affects dog bites. We know that boys aged five to nine years are twice as likely to be bitten as girls the same age. Males are more likely to be bitten than females. Bites occur more in the summer and on weekends, and 85% of dog bites occur in the dog's home. Some 62% of adults are bitten by their own dog. Does that tell you how they act toward that dog? Those bites are usually not reported. Some 75% of children are bitten by a neighbour's or a friend's dog.

There are proven ways to reduce dog bite incidences. We know that current laws are usually more than adequate to take care of these needs. We also know that by adding public education, particularly in the schools, we can decrease the incidence.

The AVMA program, of which I will leave you a copy, completed by our task force, is one technique that can be used, if adopted. These techniques have been shown to reduce the dog bite rate significantly in the state of Nevada. Calgary also has an outstanding program that is a model for any city that truly wants to reduce the incidence of dog bite attacks.

I, the American Veterinary Medical Association and the American College of Veterinary Behaviorists, of which two of our diplomates are located here in Canada, are more than willing to assist you in any way we can in helping to set up programs that will truly have an impact in reducing the incidence of dog bites.

1010

The Chair: We have about a minute and a half of questions for each party, beginning with Mrs. Munro.

Mrs. Julia Munro (York North): Thank you very much for coming here and for bringing the kind of information and data to this committee that, frankly, I think we sorely need to come up with good legislation.

I had just one question that I wanted to ask you. In both Canada and the U.S., we have seen the tendency to go toward breed-specific legislation. However, it seems to me that there has been a history of that not being a way to go, particularly in the U.S., and you identified that at the very beginning of your presentation. I just wondered if you could comment on any rethinking of breed-specific legislation in the U.S.

Dr. Beaver: If you look at those at the higher levels who are very involved in legislative-type activities, they are beginning to realize that this isn't an answer. The problem is that they can't get good data. The data that they can get shows that these types of actions are a reaction instead of a truly meaningful approach to solving a problem. The numbers of bites do not change when a community enacts that type of legislation.

Mr. Peter Kormos (Niagara Centre): Thank you, ma'am, for coming. In the Toronto Sun today, Bob MacDonald makes a very persuasive argument calling for a ban on pit bulls after, as he says in his column, an attack by three of them on a four-year-old boy in Ottawa. Bob MacDonald, the Toronto Sun columnist, then goes on to encourage this government to proceed with its ban on pit bulls. What Mr. MacDonald, in the Sun, neglects to note is that it wasn't pit bulls that attacked the boy in Ottawa; it was bull mastiffs, which aren't covered by the legislation at all.

All of the scientific evidence that has been presented to date, both pre-committee and during this committee, has objected to and in fact rejected breed-specific bans as a solution to dog bites, but for Professor Alan Beck at Purdue University, who provided a quote to the government, in effect giving his seal of approval to this legislation.

What do you know about Professor Beck and his support, if it is in fact support, for breed-specific bans?

Dr. Beaver: This is a recent change in his mind. For many, many years he had followed and condemned breed-specific bans. It has been surprising to those of us

who know him and who know the materials to which he has access. They are the same as the materials to which we have access. Every one of us who has been actively involved in this area is very surprised and has not had a chance—this has come out, literally, within the last few weeks.

Mr. Kormos: Has this been along the road to Damascus?

Dr. Beaver: I have no idea where he's coming from.

Mr. David Zimmer (Willowdale): I suppose one interpretation of his change would be that he has finally seen the light.

Dr. Beaver: He would be one of a very small minority who deal with this dog-bite issue—not breed-related issue—dog-bite issue—literally on a daily basis. His work is in a slightly different area. His has to do with the human-animal bond. It's not dog-bite-specific.

Mr. Zimmer: Purdue University's faculty of veterinary science is a distinguished faculty in the U.S.?

Dr. Beaver: They're the same as all of the other 28 veterinary colleges.

Mr. Zimmer: It's a distinguished university.

Dr. Beaver: Thank you. Then Texas A&M is distinguished as well.

Mr. Zimmer: Purdue University is, along with Texas, a distinguished faculty.

Dr. Beaver: That's up to everyone to decide. They're accredited like all other U.S. and Canadian schools.

The Chair: Thank you for your deputation and your time this morning.

GEORGINA KENNEL AND OBEDIENCE CLUB

The Chair: Is there a representative here from the Georgina Kennel and Obedience Club? Please come forward.

Thank you for joining us this morning. We have 15 minutes for your deputation. If you leave any time remaining, it will be divided among the parties for questions. For the purposes of Hansard, please introduce yourself with your full name.

Ms. Dawn van Nostrand: My name is Dawn van Nostrand, and I'm presenting this submission on behalf of the Georgina Kennel and Obedience Club—I'll refer to it from here forward as the GKOC.

The GKOC is a non-profit organization whose mission statement is the promotion of proper canine care, education and representation within their community and at large. Founded in 1990 by a group of purebred dog enthusiasts and breeders, the club has grown to become a respected body within the town of Georgina and the Canadian established purebred dog fancy. The Canadian Kennel Club granted the GKOC full recognition in 1991.

In keeping with our mandate of education and canine care, the GKOC runs obedience classes which are open to all members of the community and their dogs. We have an annual all-breed conformation and obedience show in November. As a gesture of goodwill and com-

munity spirit, the club donates the admission receipts from the show to local charities. Our membership has also participated in events around the town helping to further positive canine representation, including the annual Keswick Santa Claus parade, the Sutton agricultural fair, local business openings, elementary school visits and therapy dog visitations.

It will come as no surprise to the members of the committee that the GKOC does not support this legislation. We know that you have heard and will hear many groups and individuals who feel the same way we do. We feel strongly enough about this issue that we wanted to add our voices.

The current membership of the GKOC represents a number of registered breeds, from toy breeds to retrievers to large herding breeds. We do not have members who own the prescribed breeds cited in this legislation. That, however, does not make this legislation acceptable to us. The legislation has an impact on the whole community of dog breeds and their owners, and we are members of that larger group. There is no guarantee, if this bill passes, that our breeds will not be targeted sometime down the road or that the list of censured breeds will not grow as pressure from segments of the public who use media politics is put on the government to have other breeds added to the legislation.

During the many years that our members have been participating in dog shows, we have certainly had the opportunity to be around those CKC-recognized breeds that are now listed under the description of "pit bull" in this proposed legislation and have never found these particular breeds to be any more dangerous than the other breeds participating in the shows. Any dog in the wrong hands could potentially be a dangerous dog. Stronger legislation aimed at the owners of dogs that harm or threaten the public or other animals makes sense. Targeting a few breeds—in the case of pit bulls, a non-breed—will not effectively deal with the owners of dogs that are trained to be dangerous or dogs that become dangerous through lack of responsible pet ownership.

The legislation also effectively downloads the responsibility of policing and dealing with decisions as to whether or not a particular dog is indeed a pit bull on to our already overburdened and underfunded municipal governments and their animal control agencies.

Education is a key component to addressing the issue of dangerous dogs. Yet this legislation fails to ensure that programs and funding for them will be put in place to ensure that members of the public receive appropriate education in dealing with dogs of all breeds. Education and public safety go hand in hand, and yet this is not addressed at all in this legislation. There are many factions of the public who need to take responsibility for the control of dangerous dogs, and the legislative framework must support their ability to do so.

Breeders need to take the responsibility for breeding dogs of good temperament and screening potential owners so that their puppies are placed in the correct homes. They must stress the need for proper socialization

and training and responsible ownership to their puppy buyers. Puppy mills, backyard breeders and puppy brokers must have stronger enforcement against them to curtail their ability to sell ill-bred dogs to an unsuspecting public.

Owners must take responsibility to ensure that the dogs they purchase are of good temperament and that the breed they choose is correct for their lifestyle. They need to take the responsibility to learn as much about their chosen breed as possible and to make sure the dog has received proper socialization and that the socialization continues from the day it enters their home. Owners must take the responsibility of training their dog to be a good canine citizen. This includes ensuring that their dog will not be a potential threat to the community by using appropriate means of restraint where needed.

Parents must take the responsibility of teaching their children to respect dogs and to understand that just because one dog is friendly, it does not mean they all are. Life is not scripted by Walt Disney. If they are also dog owners, they must ensure that young children are properly supervised around dogs at all times. How many dog bites could have been prevented if only the parents had taken the time to teach their children how to respect a dog's space?

1020

Communities and municipalities must provide increased dog safety education to the public, particularly at the grade school level. They need to take a stand against irresponsible dog owners. This government must provide them with the funding and infrastructure support for these programs and for enforcement.

This government will not prevent dog attacks by passing breed-specific legislation. Breed-specific legislation has been tried elsewhere and failed. In fact, there are now 12 American states that have repealed breed-specific legislation because it is ineffective and unenforceable.

What this government should do is pass reasonable and enforceable dangerous-dog legislation, not outlaw specific breeds. The GKOC has the following recommendations for the committee:

(1) The problem of dog attacks is best dealt with through a comprehensive program of education, training and legislation encouraging responsible ownership of all breeds. This government must refrain from enacting provincial animal control legislation that is breed-specific and instead implement a comprehensive prevention strategy that mandates public education, stronger enforcement of existing bylaws and stiffer penalties for irresponsible owners.

(2) The existing Dog Owners' Liability Act should be strengthened and clarified by making the following amendments:

—Define severe physical injury as meaning a physical injury to a person that results in muscle tears or disfiguring lacerations or that requires multiple sutures or corrective or cosmetic surgery.

—Mandatory destruction of vicious dogs: Dangerous dogs should not be sent to research facilities where their presence poses a threat to those who handle them.

—The meaning of "provocation" must be clarified so that there is a distinction between a provoked and an unprovoked attack. Thus, an attack is not considered unprovoked if the person attacked was wilfully trespassing on the premises occupied by the dog's owner; was committing or attempting to commit a crime; was teasing, tormenting, abusing or assaulting the dog; or if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault.

—Persons found guilty under the act will have a mandatory lifetime ban from dog ownership imposed upon them as part of their sentence.

—Further, the maximum fine of not more than \$60,000 contemplated under Bill 132 subsection 18(2) for a corporation should be applied to individual owners. In addition, the jail term of not more than six months in subsection 18(1) should be increased to not more than two years.

—Responsible dog owners must have safeguards against malicious accusations aimed at their prosecution or the removal of their dog.

As dog fanciers and responsible dog owners, we of course applaud the efforts of the government in trying to protect public safety through legislation. If Bill 132, in its focus on a specific breed, is the most appropriate means for enhancing public safety, then logically this formula could be applied to other pieces of legislation designed to protect the public. Let's explore that further: Every year lives are lost, people are injured, property is destroyed and the judicial system is tied up because of people who drink irresponsibly and then drive. Using the formula of breed-specific banning, the solution here would be to ban all persons who drink from living in the province of Ontario. The government could go one step further and ban alcohol. There are segments of the population that would absolutely support such a prohibition. We are certain that such action will not be taken by the government any time soon, and for a myriad of legitimate reasons.

We do not seek to trivialize the pain and suffering of those who have had a personal tragedy as a result of someone who acted irresponsibly by drinking and driving. We also understand why those who have suffered personal tragedy because of dog attacks want their safety guaranteed and that they think that banning a specific breed will do this. It will not. The example used above simply points out that when you take a flawed idea and apply it to a similar situation—in this case, public safety—the error in the concept becomes unmistakably clear.

The members of the GKOC are not animal rights activists. We come from different cultural backgrounds, walks of life and political affiliations, bound by our love of dogs. We are also residents and taxpayers in the province of Ontario, and we urge the committee to listen

very carefully to individuals and groups like ours who oppose Bill 132 and then implement recommendations that you hear. That way Ontarians can feel secure that their government has truly enacted legislation that will protect them from dangerous dogs. To do any less simply turns this process into a mummer's farce which gives a rubber stamp to a legislative decision that has already been made.

The Chair: Thank you very much. We have time for one brief question, and it would be Mr. Kormos's turn in the rotation.

Mr. Kormos: Look, I think it's important—please listen carefully. We've got to understand that if one had a choice—at least if I had a choice, I'd far sooner be bitten by a chihuahua than a pit bull. I suppose the young woman in St. Catharines yesterday who was attacked by two vicious dogs while she was walking down the street—St. Catharines is part of the area that I represent, along with Jim Bradley. A woman was viciously attacked—lost huge chunks of flesh—by two vicious dogs running loose, and was sent to the hospital. It was only because of the intervention of some standers-by that she was rescued. I suppose she would have preferred that it was a chihuahua or two chihuahuas that attacked her rather than the two Dutch shepherds that viciously attacked her.

Is it fair to make those observations? Not all dogs are equal. In the case of the young boy up in Ottawa, the bull mastiff was clearly far more powerful than a tiny, little lapdog. In the case of the young woman yesterday in St. Catharines who was viciously attacked by two vicious Dutch shepherds, which I'm told are similar to German shepherds, again, she would have far more readily repelled an attack by a little Mexican hairless. Is that fair?

Ms. van Nostrand: I think, as has already been stated by one speaker, when you have people in the public and certainly the way it's reported out, it's much more sensational to hear about the bigger dogs attacking. By their size alone, when they attack, they would do more damage.

I have had quite a bit of experience with the rescue community, all breeds. I have probably transported over the last five years close to 250 dogs. I've been bitten twice. Actually, it was all on the same rescue transport. I got bitten first by a Lhasa Apso and then by a Shih-Tzu. Interestingly enough, at the reverse end of the trip I was picking up a Rottweiler that was just happy, happy, happy to see me, didn't try to bite me, and we rode in very much the same process.

Mr. Kormos: So maybe the government will just want to ban bigger dogs across the board. Maybe that will solve the problem.

Ms. van Nostrand: No, it won't. I have Labrador retrievers. Some people see them as big dogs. I have one Lab that is not safe around children. It's my responsibility to make sure, when I take her to the vet or out in public, that she is not anywhere near children and in a position where she can possibly bite them. I can tell you that my little brown dog does not look like the kind of dog that would ever bite anyone, but she's not safe.

The Chair: Thank you very much for your deputation this morning. Is Mr. Peter Archer in the room? No?

ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

The Chair: Is there a representative of the Ontario SPCA in the room? Please come forward. Welcome to the hearings this morning.

Mr. Michael Draper: Good morning.

The Chair: You have 15 minutes for your deputation. If you choose to leave some of the time remaining, then the time will be divided among the parties to ask you questions. The floor is yours.

Mr. Draper: Thank you. My name is Michael Draper. I'm the chief inspector of the Ontario Society for the Prevention of Cruelty to Animals. I am going to try to keep my presentation brief so I can answer questions.

An introduction to the society first: We're a non-profit organization formed in 1873. The society's statutory object is the prevention of cruelty to animals and the relief therefrom. We enforce the Ontario Society for the Prevention of Cruelty to Animals Act, which is Ontario's general animal protection legislation, along with the Dog Owners' Liability Act, here in Ontario. We operate 27 animal shelters that house over 24,000 animals each year. We also have 31 affiliated member humane societies that enforce animal cruelty legislation and animal control legislation across Ontario.

1030

The Ontario SPCA has a specific concern because we are named in this bill as one of the enforcement bodies, of course. I think everyone here believes in the same goal of reducing dog bites and improving public safety. The society's standpoint is that this bill does not accomplish that task. We support the Ontario Veterinary Medical Association and the Canadian Federation of Humane Societies, as well as our colleagues at the Toronto Humane Society's position that this bill will not work. This bill does not address the root problem of irresponsible dog owners and punishes a whole breed of dog for the irresponsible and negligent attitude of a minority of pet owners.

The bill is poorly constructed. There are a number of issues, and I want to go through each of them with you. As an enforcement officer, I have a number of concerns myself which I want to share.

The vagueness of the new "menacing" section: This is something that was brought about in the United Kingdom, with a number of problems. What is menacing? It will pit neighbour against neighbour. It was shown that this "menacing" section did not work in the UK. Over 50% of the charges related to this in the United Kingdom resulted in acquittals.

The reverse onus of the pit bull section: We're told that will not pass charter scrutiny.

The issue of the appearance and physical characteristics that are substantially similar to breeds in the bill: Entirely different breeds that are not related to a pit bull could be grouped into this section. As was said

earlier, if you breed certain breeds, such as a mastiff with a boxer, you may get a dog that looks like a pit bull.

The burden of proof: We've had issues trying to identify between dogs and wolves, let alone different breeds of dogs. There is no scientific basis on which you could DNA-type a certain breed of dog.

This will cause a number of problems, and we certainly don't believe it will solve the dog bite problem in Ontario. We're also concerned that we'll share the Windsor experience across Ontario, where a number of happy, healthy pit bulls will enter our shelters and have to be euthanized simply because no one wants to adopt them. Windsor experienced a significant increase in the number of pit bulls coming in. Those dogs have not been shown to be aggressive but have had to be euthanized simply because of space and no one wanting to adopt them at this time.

I also question section 6 of the legislation. We came to the government with a number of suggestions, before this bill was drafted, on training dogs to fight other dogs and asking for a prohibition on that. We've dealt with a lot of dog fighting in Ontario. Unfortunately, section 6 talks only about prohibiting the training of pit bulls to fight other pit bulls, not any other dog. There was no explanation offered on why this was pit-bull-specific. The criminals do not care if they're fighting pit bulls, Rottweilers or other breeds of dogs, and they certainly will switch to other breeds if this is enacted.

The same issues are abandonment and straying of dogs. I can't see why these sections are pit-bull-specific. Why would you ban the abandonment of pit bulls or the training of pit bulls for fighting but not other breeds? If this were generally to try to reduce these issues and encourage responsible pet ownership, these would not be breed-specific.

It's very unfortunate that these three sections were seen as breed-specific. It wasn't the society's intent, when we talked to the government, to make these breed-specific issues. It has almost given those who train dogs that aren't pit bulls for fighting a licence to continue to do this. It shows that it's not OK to train pit bulls for fighting or to abandon pit bulls, but that seems to be perfectly acceptable for other breeds of dogs. It's simply ridiculous.

I also want to mention something that's a significant concern. Our staff certainly aren't trained, and neither are municipal animal control officers, on identification of breeds. There is no easy way to identify a pit bull, and that's going to be excessively difficult for enforcement, let alone impossible. I don't want my staff to try to identify pit bulls. There have been a number of cases of mistaken identity in the United Kingdom where dogs have been held for months and years—five to seven years, lingering in shelters—related to these court challenges of identification of pit bulls. That isn't something we want to have happen in Ontario shelters.

Even if this bill passes in any form, there needs to be comprehensive animal welfare legislation in Ontario. I hope the government does not look at this as, "We've solved the animal issue," if something like this passes.

While the Dog Owners' Liability Act attempts to address some of the issues of negligent dog owners, we need changes to Ontario's animal protection legislation, the Ontario SPCA act. Ontario is the only province in this country that does not have a general provincial offence of causing an animal distress, or prohibit the abuse or mistreatment of animals. There is a link between public safety and the mistreatment of dogs or other animals. In my own 12 years of experience, and in the experience of all 205 of our investigators, dogs that have been mistreated or abused are certainly more likely to bite.

I urge the government to amend Ontario's animal protection legislation to address the systemic issue here of animal cruelty. In other words, don't just deal with the system; give us the tools to treat the disease of animal cruelty.

This bill also creates a false sense of security that we've solved the problem by banning pit bulls. I think there are going to be more dog bites, quite honestly, because of this. People think, "Oh, I've solved the problem. There aren't pit bulls out there if we have this." But there are other dogs that bite, of course—many other dogs—and this bill gives some type of false sense of security, really, that we've solved the dog bite issue when we haven't. That's a significant concern.

We also quote statistics back and forth about which dog bites the most etc. Well, it's very unfortunate that the recommendation from the Courtney Trempe inquest that we have a provincial dog bite registry wasn't followed. Then we'd really know what is going on in Ontario dog-bite-wise. Dog bite reports come across my desk every day, and I can assure you that many of them are not pit bull dog bites—most of them aren't—or dog attacks where a dog kills another dog. It's unfortunate that the media have managed to make it appear that most dog bites are related to pit bulls when they're not. I can assure you of that. From the reports that come across my desk, that's simply not the case.

The Chair: Thank you very much. We have about six minutes for questions, and we'll begin our rotation with Mr. Zimmer.

Mr. Zimmer: You're aware that the Attorney General did meet with the OSPCA on September 21 and again on October [*failure of sound system*] exchange in late October 2004?

Mr. Draper: Yes.

Mr. Zimmer: And you're aware that at that meeting the OSPCA made a number of recommendations, including, among others, what should go into Bill 132: search warrant powers under DOLA, increased fines under DOLA, prohibiting the training of pit bulls for fighting, enhanced offence provisions and mandatory sterilization of pit bulls? Those were your recommendations?

Mr. Draper: Not exactly. Certainly I agree about search and seizure, and that is in the bill. Training of dogs for fighting, not simply of pit bulls, is an issue that will not be solved by a breed-specific ban. We need to ban the training of all dogs for fighting.

Mr. Zimmer: And there was your recommendation for mandatory sterilization of pit bulls.

Mr. Draper: Yes, mandatory sterilization of all dogs that have bitten.

Mr. Zimmer: That's in the bill?

Mr. Draper: That is in the bill.

Mr. Zimmer: So, in fact, there was extensive consultation with the OSPCA and a number of your recommendations were incorporated into the legislation.

Mr. Draper: Some of the recommendations were incorporated in the bill, yes.

Mr. Zimmer: Well, five at least.

Mr. Draper: I couldn't say for certain without counting, but yes, a number of recommendations not related to the breed-specific issue were included in the bill.

Mr. Zimmer: As the result of the Attorney General's consultation with you.

Mr. Draper: Yes. I'm not saying the whole bill—

Mr. Zimmer: Thank you.

The Chair: Mr. Tascona?

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): I'm not going to be as abrupt with you as Mr. Zimmer was, but certainly you have pointed out a concern. I also spoke to Clayton Ruby about this. He has been retained to deal with the issue of the reverse onus provision in section 19, which I believe is unconstitutional, against the charter. I think he's going to be challenging this legislation if the Liberals go ahead with it, regardless of what the public thinks, and challenge section 19, because—you've identified two things: One is the ability, whether you can identify, but the reverse onus provision basically is that if it's deemed to be a pit bull, then it's up to the owner to prove that it's not a pit bull. Everybody knows the evidentiary problems there. Do you have a comment on section 19? I suspect, though you were cut off by Mr. Zimmer, you didn't support that.

1040

Mr. Draper: It has a whole host of problems; I agree. We've spoken to lawyers ourselves and it has felt unconstitutional. I don't know how you go about proving your dog isn't a pit bull, quite honestly. It's very difficult. As we've said, there's no science-based manner to prove your dog is not a pit bull. Other than science, how do you do it? Certainly veterinarians aren't experts at breed identification; breeders aren't. I couldn't say there's a way to identify that your dog is or is not a pit bull, or is it a mix of a pit bull and something else? There's a significant number of problems related to that section, and the reverse onus: Really, you're guilty until proven innocent. "Yes, your dog is a pit bull. You have to take this precaution." I don't know how you would prove that your dog isn't one.

Mr. Kormos: Thank you, sir, along with others, for coming. I want to thank Joe Tascona—we're in his riding; he's the MPP for Barrie-Simcoe-Bradford—for his hospitality and the hospitality of all you folks.

Let's cut to the chase, because this hasn't been said yet in this whole debate: This is about the fact that the pit bull or pit-bull-like dog has become the dog of choice for outlaw bikers, for street gang members, for drug dealers. It's the macho dog for the witless. There's no secret about how you make a dog mean. Some of them are

legion; you know, you chain it up and then you put the water and food dish just a few inches outside its reach. You beat the hell out of it on a regular basis. We used to, as kids, naively play tug-of-war with our pet dogs, but then you get it into the shaking, so it learns how to shake the hell out of an item, and that revives whatever level of instinctiveness there is in how to kill a rabbit or whatever.

So the problem—you see, I'm old enough to remember when the pit bull wasn't the dog of choice for biker gangs, gang members or drug dealers; it was Rottweilers. Before that it was Dobermans, and before that, quite frankly, it was German shepherds. The German shepherd was the dog of choice for the junkyard operator who wanted a mean, vicious dog to keep out kids like me who used to steal those spinner knobs off the steering wheels.

So it seems to me that we'd better be a little more candid about what's happening here, that the pit bull is capable of being as mean a dog as any, just as the Doberman is, just as the shepherd is, quite frankly, just as the chihuahua is. But let's be fair: A vicious chihuahua isn't as significant as a vicious golden retriever, a vicious pit bull, a vicious German shepherd etc. I think we'd better start being a little more candid about what's motivating this and about the fact that the argument against breed-specific banning is because if we take away the pit bull, that same witless, illegal biker, illegal gang member or drug dealer is going to pick yet another dog and make it mean as hell in an effort to amplify their witless machoism. Is that fair, based on your experience?

The Chair: Can you please make your answer very brief?

Mr. Draper: There's a certain segment of society that will always have a dog for illegal purposes; the drug dealers and such have a dog for protection.

Mr. Kormos: You're so much more diplomatic than me.

Mr. Draper: It makes no difference to them whether it's a pit bull, a Rottweiler—any large dog that has teeth. This is to protect their drug business. We're in homes with the police all the time, taking dogs out because of drug issues. Any of those dogs aren't pit bulls now, actually. They're other breeds of dogs.

Mr. Kormos: Don't name them. You'll put them at risk.

Mr. Draper: There's that segment of society that has dogs for all the wrong reasons. They neglect them, they abuse them, they train them to fight, and they don't care whether they're pit bulls. They'll find any breed they can, any dog they can, and make it vicious.

The Chair: Mr. Draper, thank you very much for coming in today.

PETER ARCHER

The Chair: Is Mr. Peter Archer in the room? Please come up.

Mr. Peter Archer: Members of the committee, I apologize for not arriving on time. We had a power outage in Elmvale, and I have a litter of newborn pups

under a week old. I was ready to do whatever I could. I was going to stick them in my shirt and come here to the committee, but I thought it might be disconcerting to see my shirt moving around and I know there were supposed to be no dogs here, and they would probably have their own little voices to add to what I have to say.

The Chair: It was easy enough to switch the order around. You're here now, and welcome. You have 10 minutes to speak before us today. If you use the entire time, there won't be time for questions. Any time you do leave, we'll divide among the parties for questions. It's your time. Welcome, and please proceed.

Mr. Archer: Thank you very much. As I said, my name is Peter Archer. My profession is an architect and I have a busy practice here in the Barrie area. That's my practice. My hobby, and actually my passion, is in the ownership, showing and breeding of dogs. I'm not a dog therapist, I'm not a dog behaviouralist; I'm simply—and people in the audience might shudder as I classify myself as this—a small-time backyard breeder. I don't hesitate to say that because I believe there are different classifications for backyard breeders. I'm here to bring what observations I have to the committee and hopefully can be of help with this bill.

Do I think dangerous-dog legislation is required? The answer is, yes, I definitely do. Dog attacks horrify the general public, as well as dog breeders and people involved in the dog fancy. We are particularly disturbed by that because we know and love our dogs.

In our society, a dog is an integral part of the picture of the family. You often see the traditional picture of the traditional family with the mother, father, two children, dog and cat. Some of the members of this committee might date themselves, as I do, but when I was in grade school and first learned to read, I learned See Spot Run. I don't know if they still teach that now, but I know they did in my day and age.

When we read about vicious dog attacks, we have to ask ourselves what has happened. In my opinion, the media and, to a certain extent, this legislation would lead us to believe the problem is with a specific breed—pit bulls—but I have to address the question, what is a pit bull? I believe many other people will have addressed that far more than I, and I will leave that to them. Is it an American Staffordshire terrier? In my opinion, no. This breed is a breed I've seen many times at dog shows. I've been impressed with this breed. I've been impressed with the fact that they are placid and easygoing. This has been my experience. If BSL is passed, however, this breed will no longer exist.

So, in my opinion, what is the problem? The problem is the human factor, as you have often heard. But I do not believe it is just one single factor in the human factor; there are multiple aspects to the human factor.

As I said, I live, show and breed dogs. I've not mentioned the breed of dogs I show. I show a dog called field spaniels. Field spaniels are very, very rare. There are only 30 in Canada, about 2,000 in the States, possibly about 5,000 worldwide. To those people who know field

spaniels, field spaniels are noted as a dog still with working instincts, but they're also primarily noted for the quality of their temperaments. These are dogs that bond to a family; they don't bond to one individual—

The Chair: If I can interrupt you for a moment, please, Hansard asks that you sit back just a touch from the mike.

Mr. Archer: I also forgot my glasses this morning in the rush out the door with the heat. So if I have to sit there and go back and forth like this, hopefully you'll understand.

Field spaniels could be a potentially dangerous dog. They are 40 to 60 pounds. However, as I said before, these dogs are noted in the dog fancy for the quality of their temperaments.

An interesting little fact to note about the history of the field spaniel is that this is the foundation breed of spaniel which cockers were bred from. Some cockers in the past have had a bad reputation for biting—they're a smaller dog—and the reason this happened, in general opinion, within our breed is that about 120 years ago in a litter there would be small dogs under 25 pounds that were classified as cockers and over 25 pounds that were classified as fields. Fields lost in popularity because there were changes made to the breed standard and cockers gained in popularity. Cocker were bred specifically for—they were very popular. Their numbers increased. I don't believe that care was really taken with temperament. The cocker breeders that I know now take very, very good care of temperament in their dogs.

1050

As I said before, I have a litter on the ground. Actually, there are approximately 100 field spaniel puppies born in North America per year. I now have 12 puppies, and they're all under 10 days old. I don't have all 12 in my house; that is not responsible breeding. One litter is in Iowa with my friend—I took it down there—because she can take them and give care and attention to these dogs. We're not just talking about medical care. We're talking about socializing, handling the puppies, bringing children in to see the puppies. I'm doing the same with mine.

When I mention bringing children in to see puppies and to socialize the puppies, that to me is a very, very important factor. It's an important factor from two points: the dogs learn how to deal with children and learn to appreciate children; on the other hand, I'm also given the opportunity to instruct children on handling and care and how to deal with puppies as well. I think that's a two-pronged and very, very essential part of the proper raising of dogs.

Now, I mentioned that I'm a backyard breeder and that there are other types of backyard breeders. The other type of backyard breeder has a couple of dogs inside just to breed for some cash. There's no attention paid to health, temperament or structure for these dogs. In general circumstances, the dogs are not properly socialized.

The other thing I should note is, in the proper breeding of dogs, one has to take care of breeding temperament. As I said, field spaniels are noted for their temperament.

My dogs, in particular—it's a brag—are noted within my breed for the quality of their temperament. I'm jealous of that, and I intend to keep that. So it's very, very important that you breed for those things. Most of the pups in a litter will go as pets, so it's very, very important that the puppies that go out are temperamentally quite sound.

Then there's the other type of backyard breeder who has a dog and decides to breed it with a dog down the street. "Let's show the children"—

The Chair: Mr. Archer, just for your information, you have about two minutes left.

Mr. Archer: OK, that's fine. I can do that. These people, to me, are irresponsible breeders.

There's another type of breeder, and that's puppy mills. We all know the situation with puppy mills: Dogs are kept in appalling conditions, are not socialized and are not checked for health standards. They're strictly bred for profit.

Then there's the pet shop sales of puppies. Pet shop sales of puppies, again, are profit motivated. Where's the guarantee? Where's the breeder support?

I think one of the most important things that can be achieved is public education, and this is something that hopefully some of this legislation can address. Puppies are cute, but puppies grow into dogs. What happens whenever a puppy is improperly trained or does not have the proper socialization or people don't know how to deal with it?

There are three illustrations I would like to point out to you that I've researched. I've talked to a local canine behaviour consultant. In one circumstance, she was called in by an owner. It was a mixed-breed dog. The dog was aggressive. It was food-guarding.

The Chair: Mr. Archer, you should sum up right about now.

Mr. Archer: OK. There were three circumstances of fear of biting, and none of these dogs were pit bulls.

To me, the answer is in education and enforcement. We need education of the public: what to look for in a breeder and in a pup; how to raise and treat a pup to be a good dog; where are the resources to help when needed? We need to train children how to understand and know about dogs. That can happen in the family and in the public system. The public needs to know how to act around strange dogs. Possibly another option could be that there could be some sort of insurance premium given for taking things like the Canine Good Neighbour program.

Enforcement is also crucial—fines—and we need to act more severely against animal cruelty.

The Chair: Thank you, Mr. Archer. That concludes the time that you have. All of us who are rapidly greying baby boomers understand the day that obviously you've had so far, so thank you so much for coming in.

Is there a representative present of the Grey Bruce Pet Hospital? Please come up.

Mr. Kormos: While this woman is seating herself, Chair, one, we've heard a couple of times now about 12 American jurisdictions, 12 states that have "repealed"—that's the language used—breed-specific bans. Perhaps

we could get an overview of what those states are and some understanding of what motivated the repeal from legislative research.

Secondly, Professor Alan Beck: In view of the comments made about the various positions he's had on breed-specific bans by Dr. Beaver, could research please obtain for us an anthology of the scholarly writings that have been published by him on or about the subject of breed-specific bans?

Finally, I'm wondering if legislative research would contact at least the Insurance Bureau of Canada, because they might have interesting information on insurance payouts vis-à-vis dog bites in view of the civil liability under the existing Dog Owners' Liability Act, and this might corroborate or refute the submissions put to us about which dogs are more inclined to bite, if there is any dog that's more inclined. It would also indicate whether or not the types of people who own pit bulls even bother getting insurance.

The Chair: Thank you. Legislative research has recorded your requests.

GREY-BRUCE VETERINARY ASSOCIATION

The Chair: Good morning, and welcome. You have 15 minutes in which to make your submission to the committee. If you leave any time remaining, it'll be divided among the parties for questions. The floor is yours.

Dr. Deborah Boyd: Thank you, Mr. Chairman and committee members. My name is Dr. Deborah Boyd. I'm here today wearing three different hats. First, I represent the Grey-Bruce Veterinary Association. We're veterinarians, many of whom practise companion animal medicine on a daily basis, who have hundreds of years of collective experience in dealing with dangerous dogs and who oppose breed-specific bans as a means to increase public safety and control dangerous dogs.

Second, I come as a breeder of purebred dogs: Gordon setters. As a breeder, I'm alarmed by the actions of our provincial government to limit the rights and freedoms of its citizens to breed purebred dogs responsibly. The proposed legislation seeks to eliminate dogs whose only crime is to have physical characteristics similar to a mythical entity the government has labelled "pit bulls."

Finally, I come as an advocate for the dogs themselves that are affected by this legislation. I take my job as a veterinarian seriously. I have made a promise to protect the health and welfare of my patients. Veterinarians are akin to pediatricians in that it is our responsibility to voice the concerns for those that cannot speak for themselves.

There are three points I would like to make today:

The first one, which you've heard over and over again, is that pit bulls are not a specific breed of dog. So exactly what is it you are proposing to ban?

Second, there are no bad dogs. Dogs are amoral. Moral judgments are based on our perceptions, and these perceptions are wrong and need to be changed.

And finally, we already have the tools and resources to increase public safety with respect to dangerous dogs; we just need to give them more bite—

Mr. Kormos: So to speak.

Dr. Boyd: —so to speak.

One of the biggest problems with the proposed legislation is the definition of a pit bull. There is no such breed as a pit bull. “Pit bull” is a generic expression, a hot-button term that generates an emotional response of fear and revulsion. It is a term used to describe something that is fierce, tenacious and aggressive. The very term conjures up images seen on TV of a muscular dog with powerful jaws attacking defenceless people. Everyone may have a clear idea of what he or she means by the term “pit bull,” but one person may be referring to an entirely different animal than the next. One might well call our Attorney General a pit bull because of his fierce belief that pit bulls are a breed apart. He has grasped hold of this belief and he won’t let it go.

Bill 132 makes it sound as if this mythical breed, the pit bull, really exists. Yes, clearly identifiable breeds are cited in this legislation—the Staffordshire terrier, the American Staffordshire terrier, the pit bull terrier and the American pit bull terrier—but to lump them together as a single entity would be like saying a tangerine is an orange, or maybe more appropriately, considering the intent, comparing a butter knife to an AK-47. That was a comparison that was read in Parliament from an e-mail submitted by Melvin and Joan Beech. The purebred dogs listed in Bill 132, when bred and raised responsibly, pose no greater risk to our society than any other breed of dog. I will address this point later in greater detail.

1100

The bill uses these breeds to give physical form to this creature called a pit bull by saying the amendments apply to any “member of a class of dogs that have an appearance and physical characteristics that are substantially similar to” the purebred dogs listed in the preceding clauses. By this definition, then, the American bulldog, the boxer or many of the mastiffs—just to name a few—and crossbreeds of these dogs, could potentially be banned. So how can Mr. Bryant state categorically, “... and this legislation makes it very clear, that we are addressing pit bulls. The ban will be applied to pit bulls and only to pit bulls”?

Am I suggesting, then, that people who have been seriously maimed or killed were attacked by mythical creatures? No, absolutely not; these people were attacked by dangerous dogs. What I am suggesting is that the government is using the generic term “pit bull” to label these dogs and that the definition of a “pit bull” has been created to cast such a large net with holes so big as to make it unenforceable and ineffectual. In doing so, a vast number of innocent dogs and stakeholders will be ensnared in its lines. Bearing this in mind, for the balance of my statement I am going to refer to dangerous dogs, not use the label “pit bull” and not perpetuate the pit bull myth. Pit bulls are not a breed apart. They are not a breed at all.

There is an excellent publication written by Jean Donaldson, called *The Culture Clash*, that addresses the relationship we have, as humans, with domestic dogs. In this book she talks about another myth, the Lassie myth, that promotes a distorted view of dogs. This view would have us believe that dogs think abstractly and are morally good. It suggests “that dogs that bite have character flaws and are qualitatively different than dogs that haven’t bitten.” This is known as an anthropomorphic view of dogs, that they are really just like us except that they have four legs. As difficult as it is for all parties in this debate to swallow, “we need to strip dogs of their status as honorary humans.”

It is time we abandoned the Lassie myth and replaced it with authoritative knowledge of dog behaviour and animal learning: “The science of animal learning teaches us that dogs are hard-wired to be predators and programmed to develop strong social bonds to facilitate survival.” They have an instinctual repertoire that includes searching, stalking, rushing, chasing, biting, holding, killing and guarding. In other words, biting is a natural, normal dog behaviour. Biting and threatening displays are how dogs communicate their intentions and “defend themselves from any perceived threat they cannot or opt not to flee from.”

Dogs will tend to do what has been successful in the past. A dog learns that barking aggressively at passersby will cause them to go away. But what happens when the person decides instead to take the walkway up to the front door? Barking isn’t sufficient, and the dog must escalate his aggression or run away from that perceived threat to him or his possessions. “Dogs are unaware that they have been adopted into a culture where biting is considered a betrayal of trust and a capital offence.”

Jean Donaldson goes on to say, “Normal dog genetics should produce an animal with ‘bite or flight’ as the wired-in program for both conflict resolution and for increasing the distance between themselves and anything that spooks them. Dogs, like most animals, are extremely aware of and constantly manipulating social distances. There are only two ways to do this: Move yourself away or get the other guy to move away: plan A or plan B. Getting the other guy to move away is the function of aggression.”

To accept biting as a normal behaviour will require a fundamental shift in our view of domestic dogs. The next-biggest hurdle is to accept that the dog decides what is spooky or threatening. A major element of the culture clash between dogs and humans is differing perceptions of what constitutes a threat. How often have you heard someone say that the attack was totally unprovoked? This is because the number one bite provoker in domestic dogs is some variation on a behaviour that we as humans consider non-provocative or even friendly, behaviours which affect social distances, such as approaching or reaching out with the hand: “We are mired in the belief that the friendly intention behind this gesture is read and understood by all dogs.” What’s important to understand is that bites are rarely cases of abuse or deliberate train-

ing but failures of omission: Not enough was done to get the dog prepared for life in a human environment. I believe if we were to examine carefully the many reports of dog attacks, we would find the cause to be unintentional and a function of lack of proper socialization. Dogs can be trained to be responsible, but they cannot be responsible for that training.

So what does Bill 132 do to promote the desired outcomes: that all dogs are adequately socialized and that dog owners and non-dog-owners are better educated? How does characterizing dogs as dangerous based on their physical attributes and eliminating them protect the public from dogs that lack the necessary social skills to be good canine citizens? How does it achieve the necessary paradigm shift to reduce or eliminate this culture clash? Well, it simply doesn't.

So then how do you legislate responsible dog ownership? To me, that is the challenge of the current Legislature, and not just with respect to dangerous dogs. Government can ultimately change how its citizens behave in three ways: It can provide them with information and programs to behave responsibly, it can reward responsible pet ownership, and it can punish irresponsible pet ownership.

Suggestions to accomplish these tasks are numerous and readily available. In June 2001, the American Veterinary Medical Association Task Force on Canine Aggression and Human-Canine Interactions published an 18-page report entitled *A Community Approach to Dog Bite Prevention*. I believe you'll be getting a copy of that. Dr. Beaver spoke about that earlier. This report supports the mandatory reporting of any medically attended dog bite to a human or a domestic animal, or any dog bite resulting in a report to an animal control or law enforcement agency. Accurately defining victim demographics to identify populations at greatest risk for bites and defining dog and owner characteristics associated with these incidents facilitates effective program planning and proper targeting of both control measures and educational efforts. Defining high-risk geographic areas at city, county or neighbourhood levels would provide that limited resources for animal control and public education could be appropriately deployed. Availability of baseline data will also allow the assessment of the impact of specific elements of the bite prevention program and give more informed direction for further legislative change. Accurate and complete reporting of dog bites is an essential first step in an effective bite prevention program.

How do we reward responsible dog ownership? It's perhaps a little more challenging concept, but what about reducing the cost of licensing fees for dog owners who can provide a Good Canine Citizen certificate, such as the program currently offered by the Canadian Kennel Club?

The Chair: Just for your information, you have a little less than two minutes if you wish to sum up.

Dr. Boyd: OK. Many municipalities already provide for a reduction in fees if the dog has been sexually altered. Maybe an upward adjustment in licensing fee

schedules could be made to make these choices more enticing.

There are already provisions in existing legislation to deal with dangerous dogs. What is lacking is a clear legal definition of a dangerous dog. Without a concise definition, enforcement is impractical. Identification and regulation of dangerous dogs carries with it serious implications and needs to be overseen by the judicial system. The public needs to be aware of the gravity and liability of owning a dangerous dog. Repercussions regarding irresponsible pet ownership need to be explicit, and penalties for failure to meet these responsibilities decisive.

We have the tools to develop an effective strategy to deal with the issue of dangerous dogs, and there are a lot of people willing to offer their guidance and expertise to ensure that it is effective, affordable and enforceable. All that is needed is the political will to see it through.

I am not an expert in the political process, nor am I so naive as to think there aren't political forces driving the passage of this bill. Banning so-called "pit bulls" is at the heart of Bill 132. What brought me here today was my genuine belief that breed-specific legislation is not fair and does not work. What brought me here today is my belief that when intelligent, reasonable people are presented with all the facts, they will make an intelligent and reasonable decision. All I ask, on behalf of myself and my colleagues of the Grey-Bruce Veterinary Association, is that you give what I have said your thoughtful consideration. I hope you will agree that these amendments will not substantially increase public safety and will recommend that Bill 132 be withdrawn in favour of a more comprehensive act that "bans the deed and not the breed."

The Chair: Thank you very much. As there isn't sufficient time for questions, that would conclude your deputation this morning.

Is Maria De Zorzi in the room? OK.

Is there a representative of the Canadian Kennel Club in the room?

Interjection.

The Chair: I'm sorry; my agenda is one version out of date. Is there a representative of the township of Clearview?

1110

TOWNSHIP OF CLEARVIEW

The Chair: Welcome. You have 15 minutes for your deputation this morning. If you have time remaining, we will divide the time among the parties for questions. The floor is yours.

Mr. Wesley Prosser: My name is Wesley Prosser. I'm here on behalf of the township of Clearview. For those who are not familiar with Clearview township, it extends from the southern boundaries of Wasaga Beach-Collingwood down to the northern boundaries of Dufferin county and from County Road 124, previously Highway 24, over to approximately Angus. We're home to about 15,000 people who have a passion for dogs.

I've been the bylaw enforcement/canine control for the township for approximately three and a half years, and prior to that I spent 33 years as a police officer for the province of Ontario. It may not surprise you that my issues relate to enforcement. We'll maybe take a little break from pit bulls, as my issues relate to all dogs.

I believe that in Bill 132 there are some positive things to assist enforcement relating to vicious dogs, but perhaps they need to go a little further. My first issue relates to the fact that we have to be aware that currently the Dog Owners' Liability Act is silent on enforcement. It's left open to whoever decides, or does not decide, to take action. In some instances bylaw enforcement officers take action, and in other municipalities they do not. They leave it up to the police. This means you have inconsistent application on dog bites, and at times, I've seen matters go before the courts where things are dealt with solely under bylaw and the justice is powerless to issue an order under the Dog Owners' Liability Act because there has been no application made.

We operate in a township that is policed by the Ontario Provincial Police, and we have a protocol agreement where all dog bites, regardless of where they're reported, whether to the OPP or to ourselves, are handled by me. I have been quite active in the application of the Dog Owners' Liability Act.

A concern comes in section 12, which recognizes police officers, bylaw enforcement officers and others as peace officers for the purposes of enforcement. Section 13 allows these people to apply to a justice of the peace for a warrant to seize a dog where it's considered necessary. It would only be in the most extreme cases that this is done; it is not something that would be done in every instance of a dog bite. The term "in the interests of public safety" is defined in subsection 13(3), and where the justice feels that the interests of public safety are satisfied or can be satisfied by the issuance of a warrant, he or she may do so.

Once the dog is seized, section 17 requires that it be delivered to a pound, and then the act falls silent. One must assume that the next step would be a hearing under the Dog Owners' Liability Act. I think this would be the logical assumption.

In the absence of further direction under Bill 132, one must look to the Provincial Offences Act for direction as to what you do when you seize something under a warrant. Section 159 of the Provincial Offences Act deals with a justice's options and allows a justice to order something to be returned, or detained for up to three months.

When you come to a jurisdiction like Clearview township, we get court once a month. At the last court we had, on the 21st of this month, they were setting cases for trial for June 2005. So you start to see the issue that if we take a dog owner to court under the Dog Owners' Liability Act, we don't have the opportunity of having a hearing the following week. We can wait five or six months before we have a hearing. Very obviously the question comes, who is going to bear the cost of keeping this dog

in a pound for the next six months? The cost for large dogs will generally run \$25 to \$30 a day. Should the township have to bear the cost of keeping these dogs in a pound when, in some instances, the dog that did the biting doesn't come from that municipality and the victim of the bite doesn't come from that municipality, but it just happens to occur within that municipality?

I believe this should be looked at more specifically and that powers should be granted to a justice to make a determination as to who is going to pay the cost. Obviously, the number one choice is that the owner of the dog should be paying the bill. From the municipality's standpoint, since this is provincial legislation, the number two choice is that the province should pay the bill.

One of the difficulties is that you could have a variety of jurisdictions dealing with a dog bite. It shouldn't matter which jurisdiction seizes it—whether it's police or bylaw, for example—when it comes to who pays the bill. The township would like further work done in that one area under Bill 132 to clarify these matters.

The second issue that presents some concern is what happens after a hearing. Currently, it provides for options for the justice to issue an order. The orders are dog-owner-specific, by name. It says, "This person must do certain things with the dog in the future."

A few things have happened in dog attacks. One is that dog owners who understand the situation very quickly give the dog to someone else. The question becomes, can you take the owner of a dog to task over something that occurred before they become the owner of the dog? Obviously, you can't put any requirement on a dog owner who didn't own the dog. So what happens there becomes very vague.

The second and more pressing issue is that once an order is issued to a dog owner as to how they must control the dog in the future, if they give the dog away, the order dies. There is nothing to say that the order must follow the dog. When we consider that we're now talking about orders that have been issued by the court because the dog has shown a willingness to attack and/or bite—the position being that very often the court does not wish to order the dog destroyed because it is a family pet. But if the owner is going to get rid of the dog, then perhaps the most appropriate method of dealing with a dog that is known to be a threat is to have the dog put down, because the dog can very easily be passed off within the community and become a threat, and then the officials must go around the whole route again—get them into court, go through a hearing—all to deal with a dog that is known to be a threat.

So the two areas under Bill 132 that our township is asking for further attention to be given are: clarification of the responsibility for paying the costs once a dog is seized under the bill and is placed in a pound pending a hearing; and how is the dog going to be controlled prior to a hearing if someone wishes to give it away to avoid any responsibility, or once they've been placed under an order, they decide to get rid of the dog by giving it away or selling it rather than accepting the responsibility that goes with the dog?

I also have copies of resolutions. I will be leaving resolutions from our council supporting this position as well as copies of this presentation for the committee.

Mr. Chairman, I'm now open to any questions.

The Chair: We have about four and a half minutes for questions. We'll begin with Mrs. Munro.

Mr. Kormos: On a point of order, Chair: I'm wondering if the parliamentary assistant is comfortable addressing either of those two issues immediately, to indicate whether they remain at large or outstanding as indicated, or whether they are in fact addressed.

The Chair: I think the parliamentary assistant can address that at the appropriate time, when the order passes to him.

Mr. Kormos: I wonder, then, if there's unanimous consent for the government to go first so that the parliamentary assistant can address these.

The Chair: I will do my best to ensure that the time is allocated equally.

Mr. Kormos: Is there unanimous consent for him to go first?

Mr. Zimmer: I'm here to listen to the evidence of the deputants and to ask questions. I, myself, am not a witness here.

The Chair: Mrs. Munro.

Mrs. Munro: I just have one question with regard to the kinds of issues that you have raised. You talked about what happens in terms of responsibility when a dog has bitten and the process that happens with that. I wanted to know if you're concerned about liability issues for you, as an enforcement agent, or your municipality, on whose behalf you are working, with regard to identification of a particular animal, because we've heard so much about the questionable nature of being able to make an identification. I just wondered if you had concerns with regard to the liability around that identification process as it is in the bill.

1120

Mr. Prosser: My liability concerns on behalf of the township relate to whether or not we've taken appropriate action to prevent another bite from that dog, now that we know that it's dangerous. That's why we are very strong on the application of the Dog Owners' Liability Act.

As far as any liabilities with regard to the dog identification, from our perspective, no, because I see that as being an issue that the court must resolve, not the municipality.

Mrs. Munro: As I understand the proposed legislation, the authority is given to you as the agent making the determination that this is in fact a pit bull.

Mr. Prosser: We would present to the court our interpretation of the breed, and very often the interpretation of the breed, if the dog is licensed, comes from what the owner has told us. Otherwise, it would go to the appearance of the dog, but that is not an issue that has caused us particular concern, so much as these other issues. There are a variety of minor issues in the acts.

Mr. Kormos: Thank you kindly, sir. You talk about having provincial offences court once a month?

Mr. Prosser: That's correct.

Mr. Kormos: We talked about this a little bit on Monday, back at Queen's Park, in terms of a shortage of justices of the peace and/or courtroom space. What's the circumstance up here?

Mr. Prosser: I would suggest that it's justices of the peace rather than courtroom space, because the courtroom may sit open many of the days.

Mr. Kormos: But that Wakestock was being held in your jurisdiction—

Mr. Prosser: That was Wasaga Beach, not our jurisdiction.

Mr. Kormos: Next door. I just wondered whether that put some additional pressure on the—

Mr. Prosser: Wasaga Beach is the playground to Clearview.

Mr. Kormos: So let's talk about justices of the peace. We brought that up because, as a provincial offences issue, and responsibilities being imposed on municipalities, access to JPs is critical. So do you have concerns not just in terms of the adjudication by a JP in a courtroom but also about access to JPs for the purpose of the preliminary matters, obtaining search warrants etc.?

Mr. Prosser: I don't have a particular concern. I believe we have good access to justices of the peace in order to approach them for warrants and so on. One day a week is set aside specifically, but other days, we can contact the JP. The greater problem is that when we deal with matters of public safety, we don't have regular courts, because a JP court does not normally deal with matters of public safety.

Mr. Zimmer: You've raised a number of concerns that municipalities might have, but just let me read a quote to you from Roger Anderson, the president of the Association of Municipalities of Ontario: "AMO appreciated an opportunity to advise the minister on how to implement the province's pit bull ban in a manner that is practical, effective and affordable for Ontario municipalities...."

A quote from a large-city mayor, Mayor Miller in Toronto: "I support the province's swift action" in this. "It is a province-wide issue and therefore the best solution...."

A mid-sized city here in Ontario, the city of Kitchener: "Every Ontarian, in every city across Ontario, deserves the same level of safety that we have in Kitchener. That's what this legislation would do."

Small-town Ontario, Wawa, Mayor Morrison: "I commend the McGuinty government for moving forward quickly on this very important initiative." It's "in the best interest of all the people, in every town, city and community across Ontario."

So there seems to be, notwithstanding your township, some pretty broad support out there in the municipal world for this.

Mr. Prosser: I would suggest that, yes, and if Bill 132 is read by administrators and politicians within municipi-

palities, they may get a different flavour than someone who's at the grassroots level of enforcement. Whether or not they were consulted before they made their statements, I have no way of knowing. If you're talking about some of these major municipalities that will have courts going on on a regular basis, it may not be an issue. I mean, if you're in a municipality with once-a-month, it can be an issue.

Mr. Zimmer: What about Wawa, Ontario, way up north, small town?

Mr. Prosser: I will say what I said before. The mayor could very well read Bill 132 and not realize some of the issues that may be present from an enforcement level, that if they don't consult with enforcement officials, they may not understand some of the pitfalls that they're faced with in trying to enforce the legislation.

The Chair: Thank you very much, Mr. Prosser, and thank you for coming in today.

Is Maria De Zorzi in the room?

DIRK EMDE

The Chair: Is Mr. Dirk Emde in the room? Please sit down and make yourself comfortable. Did I pronounce your name right?

Mr. Dirk Emde: Yes.

The Chair: Mr. Emde, you have 10 minutes to bring your thoughts to the committee. If you leave any time free, then we'll divide it among the parties to ask you questions. The floor is yours.

Mr. Emde: Thank you very much. Mr. Chair, members of the committee, thank you for letting me appear before you. My name is Dirk Emde. I live in Grey county. I do not own any of the dogs on the Attorney General's hit list. I am, however, a responsible Ontario dog owner who is very concerned about the implications of Bill 132.

I'd like to start out by saying that this province needs urgent action to protect its citizens from all vicious and aggressive dogs. When I heard the Liberal government was going to introduce legislation to address this, I thought, "Finally. It's about time." Imagine, then, my horror when I listened to the press conference by the Attorney General and he announced he was going after pit bulls, not all dangerous dogs.

I'm not an expert on dogs. I don't have reams of facts and figures to show you. I'll let other people do that. I'm here to appeal to your common sense and fairness. That's always been a hallmark of Liberals in the past, and I hope it continues to this day. Common sense, because this legislation will cost untold tens of millions that the cash-strapped municipalities don't have. Fairness, because this legislation targets all members of specific breeds of dogs and their owners, the vast majority of which have never hurt anyone.

I'd now like to list those parts of Bill 132 that confuse and distract from the real problem the most:

(1) Under "Interpretation," it says that "'pit bull' includes ... a member of a class of dogs that have an

appearance and physical characteristics that are substantially similar" to pit bulls.

Why include dogs that may look like pit bulls but are not pit bulls?

(2) Bill 132 uses the word "menacing" without defining what that means.

(3) It goes on to say, "When ... the court finds that the dog is a pit bull," without explaining how a court will do that. Are judges to get special training in dog breed identification, as well as police officers, animal control officers and any others who may be required to identify a dog? Who will pay for training costs?

(4) In section 6, which amends section 5 of the act, the words "pit bull" have to be changed to "a dog dangerous to public safety." Why pick on certain breeds? Let's ban all dangerous dogs.

(5) The clause seemingly designed to assure research labs get lots of dogs to use: Why is that in there? It makes it seem that the Attorney General wants to confiscate dogs to give research labs a constant supply. That can't be correct, can it?

(6) It gets even worse: search and seizure without a warrant? What was the Attorney General thinking?

(7) Then there's a section that is totally unbelievable. If an owner cannot prove his dog is not a pit bull, then it is a pit bull. Wow. That takes my breath away. There are hundreds of thousands of dogs in Ontario that are living peacefully with their owners for whom no proof of pedigree exists. Is the Attorney General saying that they are all pit bulls? According to Bill 132 they are, if someone accuses them of being a pit bull. This alone puts in jeopardy every dog that is not registered. Is the Attorney General planning to get rid of all unregistered dogs?

It seems that the minister, in his haste to protect the public from vicious dogs, wrote Bill 132 without finding out what dogs were causing the problem, without consulting the experts. He spoke to people who had also enacted legislation without consulting experts, so naturally they had to say their legislation worked, even when there is clear evidence to the contrary. He spoke to police chiefs, who are likely to see any dog over 20 pounds as a threat to their officers. He spoke to newspaper editors, who have only one objective: sell print. They are certainly no experts. Now, the problem certainly exists and requires immediate action—a problem actually far more serious than this bill would lead one to believe. Ban pit bulls and the problem is solved? What about dangerous dogs of other breeds?

1130

Before I go on, I'd like this committee to consider why the Attorney General wants to ban these dogs. Surely it is to reduce injury to people. I would think so, and if it is, why doesn't he want to protect all people? Since pit bulls make up such a minuscule portion of overall bites, why is he targeting them? Since Bill 132 is addressing only public bites and only the pit bull incidents among those, it is dealing with a very small percentage of all dog bites, thus missing the vast majority.

The minister quoted news media reports as his inspiration for this legislation, yet these very accounts

show that less than 0.01% of pit bulls have been involved in an incident of biting, leaving 99.9% of them innocent of biting. Is that why he's willing to grandfather them? Despite his "ticking time bomb" statements, he's quite willing to let them stay in homes and research facilities, where they are free to maim and kill children and lab workers when the bomb goes off. Obviously, he knows his own statements not to be true. What will happen when someone is killed by a different breed? Will he add more breeds to the list? Is the ultimate aim of Bill 132 to rid this province of all dogs, since all dogs can kill?

I'd now like to leave the committee with my suggestions to make Ontario safe from dangerous dogs:

(1) Require dog owners to show that their dogs are safe, just as we require people to prove their cars are safe. Do this by having minimum training requirements, and test for them. Weed out unsafe individuals, not entire breeds.

(2) Require all breeders to sell dogs with government-approved training materials so their owners can learn how to provide at least a minimum of training and socialization. Require all breeding dogs to pass a temperament test prior to breeding.

(3) Require all dogs, when walked in public, to be on a leash, unless in an area set aside for off-leash activities. Require municipalities to strictly enforce this at all times.

(4) Require all dogs that are not shown or bred to be spayed/neutered.

(5) Encourage school boards that all school-aged children receive at least a minimum amount of training in school and at home in how to behave around dogs.

As for muzzles, if the above were implemented, no muzzles would be needed. Well-trained, leashed dogs don't require one; they are under the control of their owner.

In closing, I would also like to say that much harsher penalties should be applied to those who breed or train dogs for fighting, abuse or neglect an animal or allow it to run loose. A fine is not enough, no matter how large. Lots of people won't be able to pay it. People who abuse animals should be charged under the Criminal Code, with real jail time and a lifetime of not owning dogs as penalties. Also, leash laws must be strictly enforced at all times, not only when someone complains.

The Chair: Just as a point of information, Mr Emde, you've got a little less than a minute.

Mr. Emde: OK, I'll hurry.

If the problem of dangerous dogs is looked at with common sense, one quickly sees that breed bans are completely unnecessary and actually counterproductive. We need only to ban dangerous dogs. Anything less is showing disrespect for all those killed or maimed by dangerous dogs other than pit bulls. Let's eliminate vicious dogs of all breeds.

Thank you for the time to present my viewpoint.

The Chair: Thank you very much for your submission. Unfortunately, there isn't time to have questions for you this morning, but thank you for coming in.

GEORGE SCOTT

The Chair: Is Mr. George Scott in the room?

Mr Scott, please come forward.

Mr. Kormos: Mr. Chairman, on a point of order: When Mr. Emde made reference to Liberals being known for common sense and fairness, was he referring to Adscam or to the gun registry?

The Chair: As both of those relate to a different jurisdiction, I'll declare the question out of order.

Mr. Scott, welcome this morning.

Interjections.

The Chair: Would everyone please address their comments to the Chair. Thank you.

Mr. McMeekin: Mr. Chair, he didn't mean public auto insurance, did he?

The Chair: And your comment is out of order as well.

Mr. Scott, you have 10 minutes to address us this morning. If you leave any time remaining, it will be divided among the parties for questions. The floor is yours.

Mr. George Scott: Last summer, my wife and I and my dog were all going for a nice little evening walk, and we were attacked by two pit bulls, not one. I have pictures here of what my poor dog went through, and I still have a hole in my arm. I've been bitten by German shepherds, chihuahuas, and also by poodles. They just bite you and they let go. They don't bite and hold on for as long as they want.

This attack lasted for roughly 20 minutes, and 10 minutes before it happened there were 80 children, with their parents, playing soccer. This could have turned out to be a lot different. During the attack, the gentleman who owned both dogs used his fists and he used baseball bats. A postal worker came over with pepper spray, but nothing worked. The baseball bat was used on the dog roughly 12 times; the dog did nothing.

The owners of these two dogs left, trying to get away without admitting fault. What happened was, there were three witnesses who took down their licence plate number, and they got them. There was only one problem: After my vet bills and being off for six days, I'm out \$3,200, and I can't get anything. I would like to know how you can make compensation to people who have been attacked by these dogs. You can sit here and talk about tens of millions of dollars, but what about the people who are attacked by vicious dogs?

I have a husky, and this thing is just as gentle as a lamb. If it was a vicious dog, I'd put it down. There wouldn't be a question in my mind. Since then, my dog is nervous, very jumpy, and sometimes he's even defensive.

This is the last thing I just wanted to get off my chest: On January 18, this month, I met a man in front of the Wal-Mart store here in Barrie. He had a black and white dog with him. I asked him if it was a pit bull, because I've never seen a black and white one before. He said it was. I asked if the dog needed a muzzle. His response was it didn't because it hadn't bitten or mauled anything yet—yet.

That's all I've got to say. If you've got some questions, I'll answer them.

The Chair: We'll begin our rotation with Mr. Kormos, who has about two and a half minutes.

Mr. Kormos: I trust you're supporting the ban on pit bulls.

Mr. Scott: Totally.

Mr. Kormos: But you've raised a second issue and, again, that's what the debate is about. The debate is about a breed-specific ban versus the broader concept of non-breed-specific but vicious dog ban. Your position is fair enough, as it has been from other people who share it. But you also talk about this dilemma around compensation. There were two people who were purported to be in control or were owners of these dogs?

Mr. Scott: There were no collars on the dogs, there were no leashes, no nothing. They got out of the truck by accident.

Mr. Kormos: But the people in the truck just took off?

Mr. Scott: They tried to.

Mr. Kormos: But they were identified?

Mr. Scott: They were identified.

Mr. Kormos: Were charges laid under any legislation?

Mr. Scott: The only charges I could get brought up were by the city of Barrie, who are going after them.

Mr. Kormos: A municipal bylaw?

Mr. Scott: Yes, sir.

Mr. Kormos: Was action taken under the—this is the Dog Owners' Liability Act, where they could apply to have dogs dealt with?

Mr. Scott: I would imagine it is; I'm not sure.

Mr. Kormos: But do you know whether action was taken under that legislation?

Mr. Scott: The guy who owns the dogs is being charged.

Mr. Kormos: What, if anything, have you done—and I appreciate my inferring that you've gone to a lawyer and you can say, "Well, yes, but who's going to pay for that?" Have you done anything about getting compensated for at least your out-of-pocket expenses in terms of treating your dog etc.?

1140

Mr. Scott: The dog's vet bills alone were well over \$1,700.

Mr. Kormos: Quite right. What, if anything—

Mr. Scott: I've sent the man two registered letters.

Mr. Kormos: And obviously he hasn't come forward to pay.

Mr. Scott: That's correct.

Mr. Kormos: What are you going to do? Do you contemplate doing anything? Do you contemplate suing him?

Mr. Scott: I intend to take him to Small Claims Court. That's the only recourse I have.

Mr. Kormos: Sure. One of the comments we had on Monday, though, from one victim of, quite frankly, an even more tragic attack, more serious than yours, was

that the dog owner hadn't a pot to throw out the window, so it was no sense going after that person. Do you know whether you're in that same position? Do you have any familiarity—if you get a judgment against this person, is it somebody you're going to get any money from in any event?

Mr. Scott: I'm not quite sure how it will work out after it has gone to its conclusion. I have a German shepherd-husky, a beautiful dog. I made sure my insurance company was informed that I do have a dog and that if the dog does something wrong, I'm covered.

The Chair: Thank you. Mr. Zimmer.

Mr. Zimmer: I appreciate your point having to do with the ferociousness of the attacks. I gather you agree and that it's your position, your sense, that attacks by pit bulls are just qualitatively different from those by spaniels; they're just a different order of magnitude.

I think Mr. Kormos hit on the point this morning when even he conceded that if he had a choice between being attacked by a pit bull and—I forget the breed, but it was a small breed—

Mr. Kormos: Mexican hairless.

Mr. Zimmer: Yes—he wouldn't want to be attacked by a pit bull. That's a very important point that tends to get overlooked here: the qualitative difference, in order of magnitude, of an attack by a pit bull. I'd appreciate your further comment on that.

Mr. Scott: I've been bitten by a chihuahua. They just run up to you, have a quick nip and run. They don't even break the skin. If you have a German shepherd and he bites, he usually takes a good one or two. But when you get a pit bull attack—and I went through it for over 20 minutes—they don't release; they just keep biting harder and harder. When they're finished, you have a dog that has holes in it or you have a person who has a hole in his arm.

When I brought him in, the vet said, "You can come back and pick up your dog in an hour." When I called him up, he said, "I had to go back in and operate again." At 3 o'clock in the morning I called him up and he said, "I'm sorry, I have to go back in again. The holes are so deep that they almost penetrated the bone." You have to remember that a dog's skin is not attached to its body, so the deeper the bite goes—it just penetrates more. They don't release; they just hold on. It doesn't matter what you do to that dog, it doesn't let go.

The Chair: Thank you very much. Mr. Tascona.

Mr. Tascona: I appreciate your coming out here today. I just wanted to ask you, do you realize that currently dogs, where they're being defined as pit bulls, whatever that is, are not impacted by this legislation? We're talking about the future. Do you understand that?

Mr. Scott: That's fine.

Mr. Tascona: What we're trying to accomplish here too is looking at a way, because we're having the public hearings—Julia Munro has put forth a bill with respect to dealing with vicious dog attacks, not necessarily just pit bulls. We're trying to find a way to deal with all dogs that would be construed as vicious dogs.

I just want to ask you—because there's another element. I was on the city of Barrie council when we dealt with the Dog Owners' Liability Act and I can understand the frustration that can come from that. But did you go to the police with respect to looking at laying charges there?

Mr. Scott: The police were called. That's how they got the dog owners: from the licence plate numbers on the truck. But what happened was that these two gentlemen were still in the city of Barrie, were contacted and admitted full guilt to the police officers.

Mr. Tascona: Did the police do anything?

Mr. Scott: Nothing; not a thing. If I hadn't pushed the matter with the city of Barrie, you wouldn't even have heard of me.

Mr. Tascona: I understand that, and I totally sympathize with your situation, because it's frustrating. But at the same time, have you pursued it with the police and said, "Are you going to take some action? Are you going to do something?"

Mr. Scott: When I asked the police department for their report, 99% of it was blacked out and I had to pay five dollars for it. All they had at the top was "The city of Barrie police department."

Mr. Tascona: So they're not going to do anything. That's basically what you're telling me.

Mr. Scott: The second report they gave me, after talking to two staff sergeants, was, "Sure, we'll give it to you. You deserve it." That was it. Nothing else. No charges laid against them for taking off on the scene. Nothing. Not a thing.

Mr. Tascona: That really isn't acceptable.

Mr. Scott: Well, that's what happened.

Mr. Tascona: I'd like to talk to you about that later, because something should be done. The police have a role. That's one of the concerns out there from the public: getting a conviction under the Criminal Code under criminal negligence and also dealing with it from a non-criminal point of view, which is the Dog Owners' Liability Act. Those avenues should definitely be there, and it may be that the city of Barrie is not set up to deal with dog attacks properly.

Mr. Scott: After a dog attack, everything goes to public health, especially if you go to the hospital. The two dogs were from Sudbury. I got a phone call from Sudbury public health that both dogs had been quarantined for 10 days because they didn't know if they'd had their shots. Afterwards, they were put down. I never heard anything else from the health unit here in Barrie; not a thing.

The Chair: Mr. Scott, thank you very much for your time and for coming in this morning.

This concludes our morning's hearings. This committee is in recess until 1 o'clock.

The committee recessed from 1146 to 1300.

The Chair: I call the committee to order once again. This is the standing committee on the Legislative Assembly. We're here to review Bill 132, the Public Safety Related to Dogs Statute Law Amendment Act, 2004.

Mr. Zimmer: Mr. Chair, can I just raise a matter? On Monday, we had a discussion, and as a result of that discussion, we issued an invitation to someone from Calgary to give us a written submission. I'm going to ask the committee if they would issue the same invitation to Mr. Tim Dack, the chief operating officer, animal services agency, city of Winnipeg.

The Chair: Mr. Zimmer has moved that the committee issue an invitation to the city of Winnipeg similar to that issued to the city of Calgary. Is there any discussion?

Mr. Tascona: Is it a written presentation, Mr. Zimmer, a written report that he's going to provide to the committee?

Mr. Zimmer: Yes.

Mr. Tascona: When would that happen?

Mr. Zimmer: Right away. Well, next week, I guess.

Mr. Norm Miller (Parry Sound-Muskoka): If I may, it was Mr. Bill Bruce, director of animal and bylaw services for the city of Calgary, that I asked about the other day. Have we had a response from him?

Interjection.

The Chair: The committee clerk advises that he has spoken with him and that the written submission will be received by the deadline.

Mr. Miller: Great. Thank you.

Mr. Tascona: The same would apply to the chap from Winnipeg?

The Chair: Yes.

Is there a need to call for a vote? All those in favour? Agreed? Agreed.

I may also add that anyone at this point is eligible to submit a written brief by the deadline of February 3.

NORTH AMERICAN FLYBALL ASSOCIATION

The Chair: Is there a representative present of the North American Flyball Association? Please come forward.

Welcome to the hearings this afternoon. You get the first word in what looks like is going to be a very long afternoon. You have 15 minutes to present to us. If you leave any time at the end, it will be divided among the three parties for questions. Please begin by identifying yourself for Hansard.

Mr. Glenn Hamilton: Thank you very much. Good afternoon, Mr. Chairman and members of the standing committee on the Legislative Assembly regarding Bill 132. My name is Glenn Hamilton. I'm the secretary of the North American Flyball Association, NAFA, and a member of its board of directors. We've asked to be represented here today to state our opposition to Bill 132. Unfortunately, pressures of business have prevented Mr. Sam Ford and Mr. Lee Heighton from attending.

NAFA is the only registry in North America for the competitive dog sport of flyball. You may have seen flyball on television, at a Harlem Globetrotters' basketball game or perhaps at a Toronto Raptors' half-time

show. National Geographic has aired a documentary on the sport many times. ESPN has profiled the sport on television, as have the Outdoor Life Network and Animal Planet. Flyball is an extremely popular dog sport, uniting owners and handlers in a team relay race where dogs compete head to head, racing just feet apart, without restraint or leashes, relying strictly on the handler's verbal control and motivation for their dogs.

We register over 15,000 dogs, both purebred and mixed breed, including the recognized breeds Staffordshire bull terriers; Amstaffs, or the American Staffordshire terriers; American pit bull terriers, the type of dog commonly referred to as a pit bull; and any number of mixes of these breeds. We recognize all breeds of dogs registered with the Canadian Kennel Club, the American Kennel Club, the Mexican Kennel Club, the United Kennel Club, and the American Herding Breed Association. We allow mixed-breed dogs to compete equally with recognized purebred dogs.

Ontario is an important part of the flyball community, accounting for over 10% of our annual revenue. Three of the five largest flyball tournaments held in the world occur in Ontario. What you, as a committee, recommend as changes to Bill 132 are of direct concern to NAFA and the flyball community throughout not just Ontario but also North America.

This extensive review of dog legislation, the largest and most far-reaching ever held, is unfortunately based on the "inaccurate facts" that are a part of the initial legislation. This could become the model used by other jurisdictions throughout North America and we're concerned about that. Let's all make sure that any legislation is done wisely and with the right goal in mind: to protect the public from dangerous dogs.

I would like to take time to address several of the concerns of the North American Flyball Association. We are here today to speak in opposition to Bill 132 because the proposed legislation does not address the question of controlling dangerous dogs. It is our belief that Bill 132 in its current form will not achieve your stated purpose of reducing dangerous-dog incidents.

In our experience, aggression is not breed-specific. In flyball, dogs race side by side just feet apart. In the 25-year history of competitive flyball, we've raced well over a million individual races and there has never been a Staffordshire bull terrier, an American Staffordshire terrier, an American pit bull terrier or any mix of these breeds excused from competition for aggression—not once.

We ask the committee to support the removal of the breed-specific legislative component from Bill 132. This component is based on the conclusion that pit bulls are a breed of dog. They are not. What began as a generic term to describe a large fighting dog has been extended to any dog with a large head. This loose definition cannot be used to arbitrarily segregate a group of dogs and breeds as dangerous.

In the experience of adjudicating our events, we've found it to be much more productive to deal with

aggression on a case-by-case basis, regardless of the breed. If your goal is to identify dangerous dogs, and I believe that it is, you must step outside of the artificial constraint of specific-breed definitions. Legislation must be believable to gain the trust of those it is enacted to protect. By excluding only certain breeds, will the public immediately feel safe again? Many of the recent biting incidents have been described as being caused by a pit bull, yet when the facts are known, it is a breed well outside the breeds listed in Bill 132.

For the public to give you the trust in Bill 132 that you seek, you must remove the artificial limits of breed definition. Identify dangerous dogs regardless of breed. The North American Flyball Association is in agreement that municipalities need dangerous-dog laws and they need to protect their citizens, young and old. The need to punish the irresponsible and negligent dog owners and breeders is the key to success in any such legislation. As long as the law allows irresponsible breeders, trainers, sellers and owners to encourage dangerous behaviour in dogs, the problem will not go away. If the type of dog referred to as the pit bull, or any breed, for that matter, is banned, then these people will simply move on to yet another breed. Even the most docile breeds can be made aggressive through irresponsible caregiving and training. Although bites may reduce in one breed, they will likely increase in another.

The human factor, as stated by many of the presenters throughout these hearings, will always continue to be the problem. The person who breeds an ill-kept dog, or any other animal, for that matter, will find some other outlet for their social dysfunction and they will certainly continue to be a threat to you and me, our children and neighbours. The band-aid solution of breed banning does very little to protect the public and only serves to shift the problem to another breed down the road. Imposing breed bans is not the answer.

We oppose Bill 132 because of the inability to accurately enforce any identification of the listed breeds. When you state that a particular breed is banned and subject to specific limits, you must have a definite means to identify the dog's breed. It is not enough to say that a dog is guilty until proven innocent by virtue of a pedigree. That very requirement within Bill 132 is completely contrary to any legal process that protects the people of Ontario.

One of the keys to successful dangerous-dog legislation is enforcement. Dangerous-dog laws need to be directed at controlling attacks based on the behaviour of the dog, not of the breed. Any new laws that need to be developed in conjunction with stronger animal welfare legislation will ensure that circumstances of abuse and neglect that often contribute to a dog's aggressive behaviour can also be addressed before the attacks begin.

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The Canada Safety Council also suggests that dogs that are well cared for, properly trained and socialized do not pose the same threat as dogs that are abused. Owners of dogs found guilty of dangerous acts should be held

accountable in judicial or civil court for the acts of their animals. It is not the dog that is at fault but the hands that control the dog.

Properly enforced animal control bylaws must also be a priority. The Canada Safety Council reports that in some areas fewer than 20% of dogs are licensed as required. The Toronto Board of Health reports that only 15% of that city's dogs are licensed, and yet Calgary can achieve a much higher percentage.

Bill 132 will download the responsibility for the fate of any dog in question to the animal control officer in that region. An appeal process must be in place to protect the dog from death until the facts can be ascertained. Who will bear the costs of maintaining these dogs during the appeal process? The Toronto Board of Health has recommended that the province of Ontario fund 100% of the costs related to its breed-specific legislation for the next three years.

Extensive training in breed identification for animal control officers would be necessary to enforce the BSL component of Bill 132. Understaffed, underpaid animal control officers become the issue here.

On a personal note, I recently contacted the animal control shelter in Brampton. A friend of mine's dog had left the backyard and was found. I clearly identified the dog I was searching for as a three-year-old Jack Russell terrier mix, white and brown with a smooth coat. Based on that description, they were able to confirm that the dog had been recovered and was safe. The owner received her receipt in the mail after the dog was released, and the Jack Russell terrier mix was clearly identified by the animal control office as a six-month-old field spaniel. There is no similarity whatsoever in the look of a field spaniel and the look of a Jack Russell terrier mix. This is a true story. If this dog had been identified as a pit bull under Bill 132, in all likelihood she would have been euthanized or transferred to a research facility before the owner had the opportunity to correct the animal control officer's error.

One of the goals of our sport and its trainers is to educate dog owners as to their responsibilities in proper socializing and training and responsible dog ownership. This is the direction that the Ontario government needs to pursue. Children under the age of 14 are the most common victims of dog bites and attacks. Educational programs for children should be started at the public school level. Following the guidelines of the Bite Free program designed by the British Columbia SPCA is an excellent starting point. The Canadian Kennel Club, the Canada Safety Council, the Canadian Federation of Humane Societies, the Canadian Veterinary Medical Association and the Pet Industry Joint Advisory Council all endorse this program. Responsible dog ownership is the key to reducing the number of dog-bite incidents. Education of the public, including children, is essential.

Our sport revolves around trained dogs and trained handlers. The dog owners are responsible owners, qualified trainers and educated breeders. Flyball is a family-oriented sport with handlers starting as young as four

years old, and some handlers continue in the sport well into their 80s.

We are opposed to Bill 132 and the negative economic impact that the proposed legislation will have in Ontario. Bill 132 has the potential to eliminate the economic benefit that our sport of flyball brings to Ontario. The North American Flyball Association wants to find a method that avoids shutting down our sport in Ontario. In addition to the sport of flyball, Bill 132 will impact many other participant dog activities much like flyball. All dog sports are in danger of being affected to the point where responsible dog owners, with their trained, socialized dogs, will be unable or unwilling to compete in Ontario.

The Chair: You have two minutes remaining, if you want to sum up.

Mr. Hamilton: Terrific. I'm on the last page.

NAFA sanctions almost 350 tournaments annually across North America. In 2004, 950 teams entered our events in Ontario. It is our estimate that involvement in flyball tournaments will generate over \$4 million in revenue for Ontario over the next three years, with much of the revenue going to the travel industry and small towns where hockey and soccer arenas are often rented during the summer months. There is seldom a weekend without a flyball competition somewhere in Ontario from April until the end of September. When not competing, clubs are practising, hosting training classes and being ambassadors for responsible dog ownership in their communities.

With the announcement of Bill 132, competitors are now afraid to come to Ontario. With the threat of breed-specific rules being enacted within Bill 132, they are concerned for the welfare of their dogs and those of their teammates. The NAFA rules, which define flyball as a sport for all dogs, cannot meet the requirements of the proposed breed specifications.

In conclusion, the North American Flyball Association reiterates its opposition to those portions of Bill 132 that are breed-specific. As noted, breed-specific legislation has not worked elsewhere and will not be effective in Ontario. Please listen and involve the expert organizations that are presenting to you throughout these hearings. They are more than willing to support the government in the definition, implementation and maintenance of responsible dog ownership legislation for everyone. Legislation must protect all victims yet also protect dog owners' rights. We will help you, and encourage you to make the right recommendations for Bill 132.

On behalf of the North American Flyball Association, I thank you for the opportunity to speak before you today. I'm happy to answer any questions you might have.

The Chair: Unfortunately, we don't have time for the different parties to ask you.

Interjection.

The Chair: But they're all very nice. They don't put you on the hot seat.

Thank you very much for coming in today and for your very interesting deputation.

PAWS-ITIVELY OBEDIENT

The Chair: Is there a representative here from Paws-ively Obedient? Good afternoon.

Ms. Karen McVeigh: Good afternoon. My name is Karen McVeigh. I've been a dog trainer and behaviour consultant for more than 15 years. I operate my own business, Paws-ively Obedient, from my home in Orton, Ontario. I'm a member of the Canadian Association of Professional Pet Dog Trainers as well as a member of the Canadian Kennel Club. I have worked for the Ontario SPCA as an agent and an inspector, and I have a diploma in agriculture from the University of Guelph.

The proposed amendment to section 1 of the act in Bill 132, defining a pit bull, leaves open the possibility of the inclusion of the entire population of dogs in Ontario, as well as dogs proposed to come into Ontario sometime in the future. For example, where do mixed breeds come into this? Who's going to be proficient enough to determine exactly if pit bull breeding is present in a particular mixed breed? What about breeds like the boxer? The breed can look quite similar to a pit bull or an American Staffordshire terrier, although most do have docked tails and can appear taller and a bit leaner. An average person might mistake this energetic, fun-loving family pet for a restricted or banned pit bull. There are breeds like the dogue de Bordeaux, the Argentine dogo, the bull terrier, the cane Corso, the Neapolitan mastiff and even the bull mastiff which could look like a pit bull. These dogs are not mentioned in the act description. Who would determine whether they fall under clause 1(2)(e)?

The definition of peace officers in section 12 of Bill 132 doesn't seem to recognize the need for some degree of expertise. In my opinion, the OSPCA inspector or agent would be the most experienced in viewing the variety of breeds. But even these peace officers started out as volunteers: someone who loves animals and maybe owns or has owned a dog or cat and wants to help. Would they be the persons distinguishing between the various breeds? I wonder how the registered breeders are going to take to this. In my opinion, police officers should be used for keeping the peace, crime prevention, illegal drug control etc.; that is, they are to perform the duties as set out in the Criminal Code and the criminal statutes of Ontario. If these peace officers are suddenly tasked with the enforcement of a specific breed ban on the canine population of Ontario, they will not be available to enforce the laws they are sworn to enforce. Can we as Ontario citizens therefore expect an increase in violent crime? I wonder how many of them are familiar with dog breeds, or even with handling dogs, for that matter.

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The variety of breeds is a result of the vast uses intended for dogs by us humans.

Retrievers are very high-energy dogs, very intelligent, used for retrieving fowl. Do any of you own a retriever? Then you would know that these dogs have special

requirements for their energy, their intelligence and of course their intense drive for birds.

What about guard dogs? These dogs are used by people for guarding sheep, cattle, houses, for police work etc. Do any of you own some variety of guard dog? I know that all these guard dogs differ depending on their specific breeds, but in general you'd know how intelligent they are and you'd understand their independence and their confidence levels.

If any of you were looking for a dog and you had to choose between a retriever and a guard dog, would you recognize any potential characteristic that you might have to consider for your lifestyle that would influence whether you get a retriever or a guard dog? In my line of business, I deal with a multitude of owners who are unfamiliar with differentiating between breeds and groups of breeds. They don't seem to acknowledge the different breed characteristics before they select a breed. Therefore, my role as a dog trainer is to assist in problem-solving, mainly due to breed frustration.

The Canadian Kennel Club is the primary registrar for purebred pedigrees in Canada. It's been shown that they have approved more than 160 breeds since the 1800s. This does not include the number of breeds given recognition by the CKC but not technically registered by the CKC.

The Canadian Kennel Club is also devoted to the study, exhibition, breeding and advancement of purebred dogs. There are more purebred registries in Canada, but the CKC is the most familiar and most utilized. Under identification of "pit bull" in the amendments, section 19, the act indicates that in any court proceedings it will be up to the owner to prove that their dog is not a pit bull. The Canadian Kennel Club, for example, requires CKC registration for both the dam and the sire in order to register a litter. The puppies are then tattooed or micro-chipped and the papers are administered with proper Canadian Kennel Club registration numbers.

People in today's society are propagating dogs regardless of registration or purebred status. What if you owned a boxer? Being backyard-bred, it's a little on the stocky side, the tail is not docked, but he's been the love of your life for seven years and your typical man's best friend. How are you going to prove that it isn't a pit bull or a mixed breed with pit bull in him?

Dogs, specifically the breed or breeds involved, are rapidly multiplying through puppy mills, unregistered kennels and by people who lack the knowledge and compassion to multiply these animals. The Ontario Society for the Prevention of Cruelty to Animals was recognized to represent the rights of animals, as well as provide protection, control and assistance regarding the needs of animals, on behalf of the Canadian Federation of Humane Societies. The Ontario Society for the Prevention of Cruelty to Animals attempts to condemn puppy mills and unregistered breeders, but their hands are tied by political inefficiencies in the updating of animal cruelty sections in the Criminal Code.

The amendment to Bill 132, section 9(4), and those other sections similarly indicate that dogs determined to

be pit bull types can be held at "a pound operated by or on behalf of a municipality, Ontario or a designated body or to a research facility within the meaning of the Animals for Research Act." There are multitudes of dog rescue groups, all varying in conditions and regulations. Would this mean, then, that any so-called backyard rescue group could apply under this section?

There is, to my knowledge, a pit bull rescue group. So if I were an active member in this organization and we received a pit bull surrendered to our rescue group due to the Bill 132 legislation, I could keep this pit bull, in accordance with the pit bull rescue group. I would be, or would represent, a designated pound-type organization, would I not?

Subsection 4(1), proceedings against the owner of a dog: What types of qualification would justify someone to determine if the dog falls under subsection (b): "The dog has behaved in a manner that poses a menace to the safety of persons or domestic animals"? In my experience, almost every dog at some point in time or another may possibly fall into this category.

How many people here own dogs? What happens if someone rings your doorbell or knocks on your door, and your dogs start barking crazily like they may attack the door? How would someone like the general public or even a peace officer, as defined in section 12 of the proposed amendment, who doesn't have lots of, let's say, dog experience know whether or not your dog would bite them? Might they not just assume that your dog poses a threat to public safety? Then your dog would fall into this subsection 4(1)b. If your dog isn't defined in the definition of pit bull, you should have no concerns. But what if your dog does bite the visitor? Obviously, Bill 132 won't apply to your dog, since it isn't a pit bull and this is a breed-specific ban. Does this incident just get recorded, or does anything happen?

It was estimated by the Canada Safety Council that there were over 500,000 dog bites per year in Canada, based on United States statistics. I recently received statistics collected by one area, the Wellington-Dufferin-Guelph Health Unit, which reported the number of domestic and stray bites in these counties. If the incidents reported were less than five bites, they would not be presented in this report. There was no report of the breeds involved. This information, required by the reportable diseases information system, does not appear to be clear or substantial enough in data to isolate individual breeds. There was a study done in 1997 based on the breeds that killed one or more persons from 1979 to 1996. Is there more accurate and up-to-date information for breed statistics and bite numbers recorded for 2004?

Subsection 13(1), (a) and (b), pertains to the impracticality of obtaining a warrant in a particularly exigent circumstance, and thus the peace officer may exercise any of the powers of a peace officer. What situation would denote an exigent circumstance and who is to determine such? A dog, a restricted pit bull or similar-looking dog with its owner, on a leash, barking uncontrollably at children playing ball: Most would initially

say that the owner appears to have things under control. But what if, after several minutes, the owner drops the leash and the dog gets loose? Is this an exigent circumstance? But then again, what if the owner commands the dog to be quiet, the dog obeys and off they go, in complete control? No one will really know unless you spend some time on each circumstance. How much time in a day are the peace officers going to be able to spare?

The amendment subsection 20(2)(a) with respect to leashing and muzzling of restricted pit bulls will provide for a lot of assumptions in the eyes of the Ontario public. No longer will anyone be able to walk a dog, compatible or not, in their streets or local parks without people presuming it's a vicious dog. Not only that, but the public, a substantial number being ignorant with regard to dogs, will start questioning who has a restricted dog and who's breaking the law by not muzzling their dog.

The Chair: Just to advise you, you have about three minutes if you wish to sum up.

Ms. McVeigh: Thank you. If an owner does not have control over their canine or if it was recommended by an authoritative figure such as a dog trainer that the dog should be wearing a muzzle and be properly on leash, I suggest the number of calls to the local police office is going to be higher from the so-called concerned residents.

I'd like to commend the Ontario government for recognizing that there is a problem with dog bites, but I strongly oppose a specific-breed ban. I feel that some of the pit bulls, for example, fall into the wrong hands, for the wrong reasons. This specific-breed ban may lure some of these owners into erratic breed publicity through increased illegal breeding and activities, public exposure etc. The Ontario SPCA may become more involved with the government in control of these bite situations, as well as updating report statistics. Why not implement a dangerous-dog act that encompasses any breed involved in a reported dangerous act?

Thank you very much for your time. Does anyone have any questions?

The Chair: We would have time for one brief question, and it would be Mr. Zimmer's turn in the rotation.

Mr. Zimmer: Let me just point out that the definition of pit bull that we have in the proposed legislation is the same as the definition in the Kitchener-Waterloo city bylaw and also the same as the Winnipeg definition. Let me just quote from the chief operating officer, animal services, for the city of Winnipeg:

"Our experience in Winnipeg," that's with the same definition, "has been one of success. We have seen the number of pit bull incidents decline dramatically since introducing a pit bull ban 14 years ago. I applaud the government of Ontario for their decision to ban pit bulls and deal with this urgent public safety issue."

What's your reaction to the Winnipeg experience?

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Ms. McVeigh: May I respond, Mr. Zimmer? First of all, I have a copy of Bill 132 in front of me, which I

received from the Legislative Assembly of Ontario. If you look under subsection 1(2), it says:

“Section 1 of the act is amended by adding the following definitions:

“‘pit bull’ includes,

“(a) a pit bull terrier,

“(b) a Staffordshire bull terrier,

“(c) an American Staffordshire terrier,

“(d) an American pit bull terrier,

“(e) a member of a class of dogs that have an appearance and physical characteristics that are substantially similar to dogs referred to in any of clauses (a) to (d); (‘pit-bull’).”

Then going back to what I stated—

Mr. Zimmer: What’s your comment on the Winnipeg experience?

The Chair: You should sum up within about the next 30 seconds, please.

Ms. McVeigh: OK. What I wanted to say basically was, how are people going to determine if the dog is a pit bull or not a pit bull? As far as a specific-breed ban goes, how is someone going to determine what is a pit bull? Are you going to be able to go and look at a dog—a backyard-bred boxer, for example—and know that it is a boxer? Are you going to be able to know that, or are you going to be able to say that’s an American Staffordshire bull terrier or a pit bull?

The Chair: Thank you for your time in coming in today and for your deputation.

ALICE KNECHTEL

The Chair: Is Alice Knechtel in the room? Good afternoon, and welcome.

Ms. Alice Knechtel: Good afternoon.

The Chair: For the purposes of Hansard, please begin by stating your name. As I’ve previously said, you’ve got 10 minutes to make your presentation. If you leave any time remaining, it will be divided among the opposition parties. From here, the time is yours.

Ms. Knechtel: My name is Alice Knechtel and I live in Barrie on Letitia Street. I am the victim of a pit bull. I have a Shih Tzu dog and I walk him every day at about 4 o’clock. We come down Letitia and go through the catwalk. We were entering the catwalk and a pit bull jumped out of a car and leaped at my dog. I was really afraid to bend down to pick him up or do anything to him. The pit bull threw him around, and I hollered some profane language at the fellow and told him to come and get his pit bull. He came and got him, and he was very nice to me. He kicked the dog and took him away, and he came to me and said he was sorry.

I turned around and went back home and called the police. A police lady came and I explained what happened. She told me just to wait at my home, and she went back down to where the people lived. She knocked at the door and when they opened the door, the pit bull was running up the stairs. She took her gun out and said she’d shoot it if they didn’t pull it back, so they pulled it back.

She came back to me and talked to me and I told her that I wanted the pit bull removed. She said she couldn’t do it because my dog wasn’t really harmed; he was just scared. I was really frightened. It could have attacked me too. Anyway, I’m for this bill.

Mr. Tascona: I can’t believe that, after all the attacks that have happened in Barrie, you’re against it. I just can’t believe it. There have been many attacks and there are lots of pit bulls in Barrie—lots of them.

The Chair: I would ask, please, if you have comments, to address them through the Chair.

Ms. Knechtel: Anyway, that’s what happened to me, and I’m for the bill. I want it passed and I want these pit bulls taken away.

The Chair: Are you done?

Ms. Knechtel: Yes.

The Chair: We have a little bit of time for questions, about three minutes for each party. We’ll begin with Mr. Tascona.

Mr. Tascona: Thank you very much, Alice, for presenting. I guess maybe I should explain myself a little bit. The bill in itself will not remove any currently living pit bull, as that is defined, from the streets. So that is not going to change.

What we’re looking for is dog legislation that will protect you and your dog right now, whether it’s a Doberman or a pit bull—because they’re not going to go away. They’re still going to be out in the streets. The reason why we oppose a breed ban is because we want all dogs to be dealt with in the same manner, because they could pose the same risk to the public. That’s what we’re trying to accomplish here: make sure that we put in the necessary tools.

People have been speaking here all day about having better dog ownership, because that’s obviously one of the issues here, and about better training of the dogs.

We’re not against protecting the public. I was on city council when we dealt with dog ownership—the Dog Owners’ Liability Act. It just doesn’t do the job. It has to be strengthened. We want to strengthen the legislation that currently exists to better protect the public. That’s what we’re after.

You’re not going to see any fewer pit bulls living in the streets of Barrie because of this bill; I want to assure you of that.

Ms. Knechtel: I’m sure you will.

Mr. Tascona: But we want you to be better protected. After the three months that the bill has been put in place, pit bulls will not be allowed to be bred in the province. The current number will not change, just for your own information.

Ms. Knechtel: It’s the most dangerous dog I’ve ever seen. It was really frightening.

Mr. Tascona: I don’t doubt that it was frightening for you.

Mr. Kormos: Thank you, Ms. Knechtel. Again, that’s what the debate has been about: whether you deal with this with breed-specific bans, as you’re supporting, or whether you deal with a broader-based vicious dog ban.

Which one is the Shih Tzu?

Ms. Knechtel: They're just little dogs.

Mr. Kormos: Are they the wrinkly ones?

Ms. Knechtel: No.

Mr. Kormos: What colour are they? Are they tan-coloured?

Ms. Knechtel: Some of them are tan. They're all different colours. They're very smart dogs.

Mr. Kormos: They're little dogs, right?

Ms. Knechtel: They're little dogs.

Mr. Kormos: Around what time did this incident happen? I'm not talking about the month. How many years ago? Last year? This year?

Ms. Knechtel: In the fall.

Mr. Kormos: You see, folks, and Ms. Knechtel, this is what concerns me—because I'm reading the law that exists now. Parliamentary Assistant, help me if I'm wrong. It seems to me that if a dog like this pit bull attacks a person or another dog, as the pit bull appears to have done—I don't dispute what you say; nobody's saying that it didn't happen—then, according to the law, the owner of that pit bull should be taken to court to determine whether this dog poses a danger. Again, Mr. Zimmer, help me if I'm wrong. The owner of that pit bull should have been taken to court to determine whether or not that pit bull poses a danger based on the attack that it did.

This dog jumped out of a car window, right?

Ms. Knechtel: No. They pulled up in their driveway and opened the door, and the pit bull leaped, just like that.

Mr. Kormos: Fair enough. So here's a pit bull, unleashed, and motivated by whatever motivates dogs—and it's too bad that we don't still have the doctor here—that runs after and attacks your dog. Maybe it figured it was breakfast; I don't know. It certainly wasn't about to play with it.

Mr. Zimmer, here's a case where, as far as I read the existing law, the owner of that pit bull should have been taken before at least a JP with an application to determine the degree of dangerousness of that dog, with the various remedies provided for in the statute.

Again, I hear you when you advocate for the breed-specific ban. That's what the debate is about. I'm concerned that the existing law isn't being utilized to protect you and your dog from a pit bull that's clearly vicious.

Ms. Knechtel: Exactly.

Mr. Jeff Leal (Peterborough): Thank you very much for sharing your sobering experience with us. Before entering provincial politics, I had an 18-year career in municipal politics in the city of Peterborough. I can tell you that during that time, every week I would get phone calls from people about dogs.

You've been following this issue here in the city of Barrie. Do you have any idea, over a period of time, of the number of attacks by pit bulls here in Barrie?

Ms. Knechtel: Every time you pick up the paper, somebody has been attacked by a pit bull.

There's a man in Barrie who walks his dog in the same place that I do. It's a big dog, and it was really severely—it cost him 500-and-some dollars at the vet.

Mr. Leal: Thank you very much for your comments.

The Chair: Thank you very much for coming in and sharing your experiences today.

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BARRIE KENNEL AND OBEDIENCE CLUB

The Chair: Is there a representative here from the Barrie Kennel and Obedience Club?

Welcome to the committee this afternoon. You have 15 minutes to address us.

Ms. Mike Macbeth: I've got my own stopwatch.

The Chair: Well, mine is the official time, so you don't need it. Please begin by identifying yourself for the purposes of Hansard, and continue.

Ms. Macbeth: I thank the committee for the opportunity to speak. My name is Mike Macbeth. I've been breeding, showing and lecturing about purebred dogs for 40 years. I don't look that old, I know. I'm founder and president of the Dandie Dinmont Terrier Club of Canada. I'm a writer on dog matters for several international publications, a columnist for Dogs in Canada magazine and a business writer and journalist by profession. I'm also an all-breed dog show judge, with more than 25 years of international experience. I judge all 164 Canadian Kennel Club breeds and, internationally, over 300 of the very esoteric breeds you'll find around the world. I'm speaking today on behalf of the Barrie Kennel Club, as a member and as one of their 2005 judges.

Many of the presenters will be concentrating on various aspects of Bill 132. Instead, I would like to offer the committee a history lesson.

Throughout history, dogs have been used to assist man in his work and recreation. Back when the Dead Sea was only sick, before there were defined breeds, dogs only came in basic categories, such as guard dogs, shepherds, hounds, terriers, and tiny companion dogs for the ladies. Before poisons and traps, terriers killed the vermin that jeopardized farmers' livelihoods, from rats in the granaries to larger animals such as foxes and badgers. Through selective breeding, different types of terriers fulfilled specific needs, from climate and topography to the size and speed of the rodent. Hounds were used for hunting. Over time, various kinds of hounds and other hunting dogs were developed: larger, faster dogs for hunting with horses, and smaller hunting dogs for hunting on foot. Spaniels and retrievers were used to locate and retrieve game. Every country produced a breed of shepherd to mind, herd and defend flocks of sheep, goats and cattle. Guard dogs have been required by man for millennia. Even today, particularly in have-not countries—and I just got back from judging in Brazil, where guard dogs are desperately needed by the haves against the have-nots—dogs are used to protect families and property. In Canada, guard dogs are used in police work, security and even, as we've heard before, as junkyard dogs.

A watch dog with the ability and temperament to cause injury is the reason we're here today, so perhaps it would be useful to go back in time. "Unleash the dogs of war"—since 700 B.C., that fearful battle cry inspired terror in opposing armies. Fierce Molossian fighting dogs, bred for their strength, tenacity and power, were used by the armies of the Assyrians, Persians, Greeks and Romans. Believe it or not, Attila the Hun used dogs to guard his camps. Why he would need a dog, I don't know, but anyway. During the Middle Ages, massive soldier dogs wore suits of armour. Attack dogs helped the Conquistadores bring down the fleeing Aztecs. Brutality had no boundaries.

In 1522, Aldrovandus wrote that the dogs of war were no different to farm and sheepdogs "except in the matters of their training and teaching." The methods he prescribed to train a guard or sentry dog are employed by modern armies and police forces today.

Blood sports served as human entertainment between the wars. The soldier dogs formed the basis of the aggressive dogs bred for bull and bear baiting in the 16th and 17th centuries. By the early 18th century, popular sports included dog fighting.

Man is a designer. Never content with the status quo, he seeks to improve and refine, whether it be cattle breeds, horses or dogs. A type of dog was developed for fighting in the pits, combining the strength of jaw of the bulldog, used for bull baiting, with the tenacity, gameness and courage of the terrier, used for killing vermin. It was called the bull and terrier, or pit bull.

By 1900, dog fighting was banned, both in England and the U.S. This barbaric entertainment went underground. There are savage, unregistered rogue dogs used illegally in clandestine dog fighting today, but please remember, it is the irresponsible human being who encourages ferocity. Aggression isn't ingrained; it is trained.

In the meantime, gentle purebred versions of a similar type of dog were developed by conscientious breeders in England—the little 14- to 16-inch Staffordshire bull terrier, known as the nanny dog—and in the U.S., the American Staffordshire terrier. Although quite rare in Canada, they are both popular worldwide. The Staffie bull is both England's and Australia's most popular terrier. I judge in Australia about every 18 months, and I will have at least 200 Staffordshire bulls every time I judge. A 2004 survey conducted by the Canadian Dog Judges Association revealed that Canadian dog show judges had cumulatively judged more than 13,000 Staffordshire bulls and 6,000 AmStaffs, and have never encountered a single growl or any show of aggression.

I've been asked to present for your consideration two letters which I'll submit to you. One is from the chairman of the American Kennel Club, Mr. Ron Menaker, and the other is from the chairman of the English Kennel Club, Mr. Ron Irving. You'll see in the letter that both of them oppose Bill 132.

Why are purebreds more tractable? Purebred dogs are fundamentally different to mongrels. The 164 recognized

breeds bred by Canadian Kennel Club members are regulated under the federal Animal Pedigree Act. There is accountability. Registered, with generations of known ancestors behind them, pedigreed dogs have a reliable, dependable, established heritage. Most are raised by conscientious breeders who participate in Canadian Kennel Club events such as dog shows and obedience trials. Stable temperaments are a prerequisite for these events. The dog will be surrounded by hundreds of other dogs of other breeds and must stand quietly and submit to a full-body examination by judges such as myself; otherwise they won't win a ribbon. And if you'll notice, I have 10 fingers.

Purebred dogs must all conform to a written ideal standard of perfection. Not one single Canadian Kennel Club standard allows a dog to be aggressive—quite the reverse—and Canadian Kennel Club rules state that aggression to people and dogs will not be tolerated. The penalties are significant. There are generations of selectively bred purebreds behind every CKC-registered dog—generations with the excellent temperaments required of champions.

Who are the breeders of dogs in our community? Purebred dogs are intentionally bred. Experienced, responsible breeders understand socialization, nutrition and behaviour and raise their purebred puppies accordingly. But not all dog breeders are competent. Owners of puppy mills mass-produce puppies in appalling conditions for profit. These dogs will be wrenched from the nest and sold before they're properly socialized. The expensive medical and nutritional protocols that legitimate breeders follow will be disregarded. Mr. Archer's presentation to the contrary, most of us refer to backyard breeders as people who are uncontrollable, unaccountable and usually unknowledgeable. Some breed purebred dogs; others breed mongrels or crossbreed hybrids. The profit motive is paramount, to the detriment of the puppy.

Mongrels tend to be mostly a one-time mistake, a random breeding between two willing participants. It's no coincidence that mongrels bite more often than purebreds. How can they be expected to be as reliable, genetically or behaviourally, when litters are raised on a one-time-only basis by inexperienced people?

Then there are the unregulated underground breeders, who deliberately encourage aggression in a pit-bull-shaped, short-coated mongrel with no recorded parentage. There are no consequences, legislation or authorities to control these rogue breeders. They would be expelled from CKC membership. These are irresponsible human beings.

We all agree that the public needs to be protected from any dangerous dogs, including unpedigreed pit bull types. None of us is an apologist for aggression. But I urge the committee not to condemn innocent family pets, whether purebred or mongrel, who have done nothing to deserve such condemnation.

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Let's look at the definition of a pit bull. We cannot ban that which we cannot define. What is a pit bull? It's

impossible to accurately define a pit bull, which is a phenotype or shape, not a breed. It is simply a type of mongrel. As it is unregistered, it cannot be defined. Purebred dogs with registration papers can prove their identity, but mutts and crossbred dogs cannot.

An aggressive fighting dog, short-haired, long-legged, with a strong punishing jaw, favoured by the criminal element is a dog we associate with the words "pit bull." But this dog is an amalgam of many breeds introduced to make the dog stronger, more muscular and more tenacious.

Bill 132 seeks to restrict any dog that resembles a pit bull. The legislation is Napoleonic. The onus is on the owner to prove the dog is not a pit bull. But how does the owner of a dog whose heritage is unknown prove their dog is not a pit bull, which is a mongrel whose heritage is unknown?

Genetics can only go so far. Yes, retrievers should bring you back a duck quicker than a pug, bloodhounds will find a lost child faster than a Scottie, and German shepherds will probably take down a fugitive quicker than a chihuahua—although, if you know anything about chihuahuas, fortunately they can't reach anything. All breeds have purpose and follow a form with function, but it is the raising, training and environment that determine a dog's temperament far more than genetics.

And this is the crux of the problem, ladies and gentlemen: The public, including all of us who love dogs, have the right to be safe from all dangerous dogs, regardless of shape, colour, size and length of hair. Target the disposition. Bill 132 condemns a dog for its appearance. Penalize a dog for its temperament, not its shape.

The Chair: Just to inform you, you should be looking at concluding. You have about three minutes.

Ms. Macbeth: Thank you.

Now to the problem of language and identification: As a professional writer, I know the power of words. "Pit bull" is an evocative description. It has entered our lexicon as a synonym for aggression, danger, jaw-clenching tenacity. It isn't the strong bulldog determination of a Winston Churchill; it is fearful, explosive, unpredictable. "Pit bull" has mutated from a noun to an adjective. "Pit bull" is shorthand for "dangerous."

Committee, there would not be the dozens of people applying to speak to this committee if the legislation had substituted the words "dangerous dog" for "pit bull." It's so simple. Any dog that attacks should be penalized. Since almost all attacks are perpetrated by dogs that are not on a leash, why are we not mandating that all dogs—not certain breeds, but all dogs—be leashed when walking in public? Respectfully, if the Dog Owners' Liability Act had been properly enforced, would we have needed Bill 132? It has teeth, but it's barking up the wrong tree.

So who should be penalized? Bill 132 correctly attempts to rid our community of aggressive dogs owned by, in many cases, the criminal element or macho wannabes. Perhaps "pit bull" is as much an unfair stereotype as the tattooed and leather-clad skinheads who own them. But those individuals who use dogs as weapons,

who flout the gun laws and the drug laws, will ignore Bill 132. They should be the target of the legislation and be heavily penalized.

It is the human being who is ultimately responsible for their dog's behaviour. Kindness and tenderness create stable temperaments. Experienced breeders produce well-socialized, gentle dogs. Any dog can be provoked into aggression, whether purebred or mongrel.

There's a song that goes: Bless the beasts and the children / For in this world they have no voice / They have no choice.

Puppies born to the wrong individuals, puppies sold to the wrong individuals, have no choice. They become what their owners want them to be. But, ladies and gentlemen, you have a choice. Don't target the shape of a dog. Penalize inappropriate behaviour and convict the real offender who created such behaviour. Punish the irresponsible human being.

I thank you for your attention.

The Chair: Thank you very much for having come here today and for your very thoughtful brief. Unfortunately, we don't have time for questions.

Ms. Macbeth: May I ask one? How do I submit the two letters from the—

The Chair: That's easy. The clerk will get them from you and we'll copy and distribute them. Thank you again for having come in today.

BEST BEHAVED DOG ACADEMY

The Chair: Is there a representative here from the Best Behaved Dog Academy?

Mr. Kormos: If I may, just a comment: There is an alternative to the unequal distribution of wealth in Brazil to guard dogs for the wealthy.

The Chair: Until that's a matter before the committee, I think we'll defer.

Welcome to the committee this afternoon. You've got 15 minutes to address us. I think you've been here long enough to understand the ground rules. Any time you have remaining will be divided. The time is yours. Please begin.

Ms. Laura Belisle: Thank you. My name is Laura Belisle. For the past year I have been the co-owner of Best Behaved Dog Academy in Barrie. I have been an obedience instructor for the past 11 years, having gained my training with the Lakeshore Dog Training Association in Pierrefonds, Quebec.

I became involved in obedience when my first dog, a cocker spaniel-poodle mix, which was an impulse purchase at a local pet store and was not given any obedience training, began to show signs of antisocial behaviour and tendencies to snap at people, including myself. Over the 12 years that I owned her, I was extremely cautious and avoided situations that would result in any unpleasant incidents. Her behaviour worsened with age and when she was 12 she attempted to bite my two-year-old daughter. I had her euthanized at the veterinarian's the same day and I vowed never to allow a situation like

that to happen to me again. I was your typically uneducated dog owner and started my next dog in obedience a week after her purchase from a reputable breeder. With this unpleasant experience, I learned how important the proper training and socialization is for any dog regardless of breed or size.

We moved to Ontario in 1999 and I began teaching for the Barrie Kennel Club in the year 2000, before forming my own partnership with Best Behaved Dog Academy in 2004. I am currently a member in good standing with the Canadian Kennel Club and the Shetland Sheepdog Club of Canada. I am a founding member of the Irish Red and White Setter Club of Canada and I am still an associate member of the Lakeshore Dog Training Association.

One of my dogs was the first of her breed in all of Canada to earn an obedience title. I was also awarded the Top Obedience Dog award from Dogs in Canada in 2000 and 2001.

I feel the breed ban will do nothing to stop the rising occurrences of dog-related aggression because negligent and/or criminal dog owners will simply find another way to acquire the dogs they favour. The dog may be removed, but the problem—the owner—remains, and with it all the potential for another mishap. Irresponsible dog owners go virtually unpunished for their negligence. The dog is put to sleep and they will get another dog, possibly with the same consequences. We must focus on the owners, not the dogs themselves. The owner of the dog must be targeted and held accountable. A breed ban will not inhibit negligent or criminal dog owners from acquiring another dog—tougher laws aimed at the owners will.

If a negligent or criminal owner is prohibited from owning dogs, pays a high fine or is jailed, the problem is stopped at the source. They no longer own a dog; therefore, the potential for an aggressive dog incident is greatly reduced.

Owning a dog is not a liability but an enhancement to our lives. Dogs are wonderful companions and have many uses in our society. Guide dogs aid the blind, service dogs aid the handicapped, volunteers use their dogs for pet therapy, rescue dogs aid in disasters, just to name a few of the hundreds of ways dogs can help us and enrich our lives. Dogs teach children responsibility and respect for other living things. They provide comfort and unconditional love for their owners.

1400

Dog ownership has evolved over the years and dogs are now primarily seen as family members. They travel with their owners, attend daycare facilities and participate in many other dog-related activities now, more than ever before. Education of the public on the subject of responsible dog ownership should be a priority in all communities. Perhaps offering a discount on a dog's licence if owners take obedience classes or earn Canine Good Citizen titles would encourage owners to register their dogs with cities and encourage owners to attend obedience classes and become better educated about their canine companions.

Although responsible breeders already recommend obedience classes to their puppy buyers, rather than spending taxpayer dollars on enforcing breed-specific legislation, which will not solve the problem, I suggest that municipalities work with their local shelters and Canadian Kennel Club representatives to offer educational programs for new dog owners. Puppy buyers should be encouraged to take obedience classes to socialize and better understand their canine companions. Local shelters should require or offer obedience classes as a condition for adoption.

In my 11 years of teaching dog obedience, I have dealt with many breeds of dogs and many different handlers. I have seen knowledgeable handlers and I have seen handlers who have no idea how to deal with their pets. I have seen well-behaved dogs and uncontrollable dogs. I have seen shy, timid dogs gain confidence and uncontrollable dogs learn restraint. I know from experience that it is the uneducated, irresponsible or criminal owners, not the dogs, who cause or even enhance, whether knowingly or unknowingly, unwanted behaviour in their canine counterparts.

For example, a student arrives for the first week of class, and their dog is jumping up, pulling on the leash and barking uncontrollably. The owner speaks soothingly to the dog and pets it to try to settle it down, mistakenly reinforcing the pet's behaviour. They are then taught that the dog does not receive a reward for unwanted behaviour—the reward being the soothing words and the petting—but is instead rewarded for being quiet once the dog has focused on the owner and has stopped barking and jumping. This is one of the ways people reinforce negative behaviour without even realizing that they're doing so.

Obedience classes can be extremely beneficial to dogs and owners alike. Owners learn to understand and correctly deal with their dog's behaviour in a variety of ways through different exercises. Owners learn to encourage and teach their dog acceptable behaviour and to discourage any unwanted behaviour. They learn how to teach their dog to behave properly around other dogs and people of all ages.

Puppy classes are structured around the all-important aspect of socialization. The puppies learn to interact with a wide variety of dogs and people in a positive and controlled environment. In the basic classes, older dogs of any age not only learn to behave around other dogs and different people, but they also learn confidence in varied group situations and learn to respond to their owners in this environment. Confident owners and their confident dogs learn to react calmly as a team to different situations, environments and stimuli.

Obedience classes are readily available in most areas. Prices are generally reasonable. There is such a wide variety of training methods available, and most sessions run for six to eight weeks. Some obedience schools and clubs provide homework; others don't. There is something for everyone's tastes or preferences.

I have been teaching obedience for 11 years and I still continue to be amazed at the incredible improvement and

change in a problem dog's behaviour after a mere eight-week session. It is so rewarding to hear an owner who was committed to the class, who worked hard with their dog at home and in different environments, say to me that they had their dog at the vet's office and everyone who worked there was so impressed with how well-behaved their pet was, or when an owner tells me that they had a houseful of guests on the weekend and they were so proud that their dog was well-mannered and a pleasure to have around.

One of my current students is an English springer spaniel, a fairly medium-sized hunting-type dog, who was physically and mentally abused, neglected and left in a shed to starve to death, and was discovered by local residents. When her current owner, my business partner, first took her in, she was completely wild, for lack of a better term. Her behaviour was extremely aggressive, completely fearful; she could not be handled without being muzzled. It was only through constant contact with her, discouraging unacceptable behaviour and rewarding good behaviour, that she slowly learned to trust those close to her. Today she participates happily in class and has taken part in obedience demonstrations for the public. This indicates how proper knowledge and handling and proper training can mould a previously dangerous dog into a happy, working obedience dog.

Rather than consider breed-specific legislation, I respectfully urge the committee to strengthen dangerous-dog legislation so that aggressive dogs of any breed and, more importantly, their owners are severely punished, but tractable and sweet dogs who behave properly and are no threat to the public are justifiably protected.

The Chair: Thank you very much. We have time for one brief question, about 60 seconds a party, beginning with Mr. Kormos.

Mr. Kormos: Were you here when Ms. Knechtel spoke with us about her Shih Tzu that was attacked by a dog that jumped out of a car?

Ms. Belisle: No.

Mr. Kormos: OK. She was walking her little Shih Tzu, doing nothing wrong. Somebody stopped their car in the driveway, opened the door, and what appeared to have been a pit bull jumped out—boom—attacked the dog, the little Shih Tzu, and thought it was dinner. Tell us what's going on here. Tell us what the phenomenon is. Is there anything the owners, short of leashing and having better control of their dog, could have done? That seems to me like, I don't know, instinctive behaviour.

Ms. Belisle: Dogs definitely have the instinct to chase and the desire to chase, some particularly more than others do. This dog, you say, was a pit bull?

Mr. Kormos: OK, let's assume that it is. Help us. What should or could the owners of that pit bull have done?

Ms. Belisle: If the owner possibly had taken an obedience class, perhaps he could have called the dog to come, and the dog would have come.

The Chair: Thank you. A question from the government side?

Mr. Leal: I have no questions.

The Chair: OK. Thank you.

Mr. Miller: Thank you for your presentation. At the beginning of your presentation, you were talking about your experience with buying a dog at a pet store. Do you think the rules should change in terms of pet stores and buying pets, dogs in particular, from pet stores?

Ms. Belisle: Pet stores are rumoured—I don't know that it's a fact and I don't have statistics to back it up—to get a lot of their puppies from puppy mills. As you've heard discussed today, puppy mills are extremely unhealthy environments and the dogs have extremely questionable temperaments and come from extremely questionable conditions to begin with. So if it were the case that every single pet store in Barrie or in Ontario got their puppies from puppy mills, yes, they should.

Mr. Miller: So there should be rules requiring them to come from a registered breeder, and perhaps some training involved with the purchase of any pet as well, that kind of thing?

Ms. Belisle: Absolutely.

The Chair: Thank you very much for having coming in today. As one who grew up in the town and, later, the city of Pierrefonds, Quebec, I thank you very much for your deputation here today.

Ms. Belisle: All right. Thank you.

Mr. Kormos: Do you know him?

Ms. Belisle: No, I don't know him.

The Chair: I think we went to different schools together.

1410

LORI GRAY

The Chair: Is Lori Gray in the room? Welcome to the hearings this afternoon. You have 10 minutes to present to us today. You can use all the time if you wish. If you leave any, it will be divided among the parties for questions. Please proceed.

Ms. Lori Gray: Thank you. My name is Lori Gray. I'm from Alliston, Ontario. I'm a canine trainer, a member of the Canadian Association of Professional Pet Dog Trainers and a member of the Dog Legislation Council of Canada.

First of all, perhaps I could just direct you to the quite thick presentation I have handed out to you. Don't worry, I'm not going to read 133 pages, but there's a lot of information, all fact, included in this manual that you can go through at a later time. What I'm going to do, basically, is just a quick summary.

I would like to open by saying that you, the members of the legislative committee, and the government as a whole have a duty and responsibility to best protect the citizens of this province. The entire country is watching our precedent-setting decisions. We, the citizens of this province and country, deserve the right to have our laws based on fact, not opinion, based on logic and knowledge, not fear and media sensationalism.

The facts speak for themselves. This has been a long debate worldwide. Many of our predecessors have tried

to curb dog attacks by banning breeds, but when the heroics are set aside and the actual numbers are presented, we find that we are left with a steady stream of unfortunate incidents.

Who is responsible? The true culprits are irresponsible owners. It is your responsibility as a dog owner to educate yourself, train your animal, socialize him and give him the care needed to be a well-adjusted dog. Accidents do happen, but the majority of serious attacks involve irresponsibility on the owner's behalf.

Winnipeg seems to be the model that this legislation has been based on. An article in the *Winnipeg Sun* on January 23 this year quotes Tim Dack as saying, "We've had a 50% reduction" in 14 years. Another quote: "It's been going steadily down" to 166 bites in 2003. Another: Bites hit 310 the year the ban kicked in. What he doesn't tell you is that only 2002 and 2003 saw a decrease in actual bites in Winnipeg. I have included an actual Winnipeg bite chart, which is in your manual and is loose. You can pull that out and refer to it. By 1997, seven years after the ban was put in place, total bites went up to 328 from 214 the year the ban was put in place.

Pit bull types of dogs were responsible for 28 bites the year before the ban went into place. The German shepherd and cross thereof, combined, added up to 95 bites the year before the ban. The Rottweiler averages 11 bites per year to present, and in 2002, the Rottweiler was at 22 bites. The German shepherd and cross stayed consistent at an average of 71 bites per year. Something is wrong with that picture.

Some argue it is not about the numbers. "Pit bulls are a breed apart," we've heard. If you ask any victim of a German shepherd, a bull mastiff or a Rottweiler attack, to name a few, if there was less damage done to them than to the victims of a pit bull attack, what would the answer be? Cody Anger, a three-year-old boy, was killed by three Rottweilers and a collie in his own living room on December 28 last year, just weeks ago, in Maple Ridge, B.C.

Calgary is the only city that has had any success in curbing serious dog attacks. Calgary not only makes animal control self-sufficient but also makes owners completely responsible for their animals' actions. Their dangerous-dog bylaw means that owners with dogs designated dangerous pay higher licence fees and higher fines. Calgary also has the highest number of off-leash parks of any city in Canada. Included also in the handout I've given you is a complete Calgary bylaw for you to make reference to.

At a Toronto city meeting on January 17 this year, the Toronto Board of Health determined that only 10% to 15% of canines in the city of Toronto are licensed. I think the word that Mr. Filion used was that he was "shocked."

Enforcement and education seem to be the main elements missing in this piece of legislation. Here are some biting incident facts: Poor training and lack of proper supervision are involved in virtually every case of unprovoked dog aggression in Canada. Most dog bite

victims are unsupervised children. Most unprovoked biting incidents occur while the dog is inadequately supervised. Most unprovoked bites involve a dog with a known history of inappropriate aggression. There is no scientific correlation between a dog's breed or size and its propensity to bite. Dogs of all shapes, sizes and reproductive status are involved in serious dog attacks. Leash laws and muzzle orders do not apply to private property, where most bites occur. Muzzling dogs should only be used when absolutely necessary and only on a temporary basis. It makes a dog, especially an innocent dog, feel vulnerable and anxious, making them likely to develop aberrant behaviours that would never have existed if they had not regularly been muzzled.

The Chair: As a point of information, you have about three minutes remaining.

Ms. Gray: Yes. In my opinion, if anyone feels a sense of security because of Bill 132, they are experiencing a false sense of security. I personally feel less safe, as the backlash of this fear-based legislation has reinforced the uninformed beliefs and fuelled emotion. I have supplied the information package, as this is a very short summary that I have just presented. I urge you to carefully consider all the information and make informed decisions.

I will leave you with this: Responsible dog owners should not be held accountable for the acts of others. In fact, no individual should be held accountable for the acts of others.

Thank you for the opportunity to present.

The Chair: Thank you very much. We have time for one brief question. It's the government's question.

Mr. McMeekin: Lori, I want to hold you accountable for your actions: They're superb.

Ms. Gray: Thank you.

Mr. McMeekin: I appreciate everybody who has made presentations to this committee, but it's obvious that you've gone to some considerable time and expense. I'm going to make sure that the AG sees all of these, but I'm going to draw particular attention, because you've gone out of your way to do the kind of research that some of us have been footnoting as we go along.

I was going to ask you—maybe those who are here want to know, and I want to know—just how much time, energy and expense did you go to, to prepare your brief today? It's exemplary.

Ms. Gray: Let's just say my dogs have been rather neglected lately—a fair amount of time.

Mr. McMeekin: This is like a Ph.D. thesis.

The Chair: You stole my line.

Ms. Gray: I have my Ph.D. in dogdom.

Mr. McMeekin: I really appreciate the work you went to. Thank you so much. It's cogent, well-thought-out and extremely well-presented.

The Chair: I echo Mr. McMeekin's comments. Obviously, I haven't had a chance to read your brief, but it seems to me to be every bit as extensive as some of the drafts of my master's thesis years ago. Thank you very much for having come in today.

1420

GREATER SUDBURY ANIMAL CONTROL AND SHELTER SERVICES

The Chair: Is there a representative of Greater Sudbury Animal Control and Shelter Services here today?

Good afternoon. Welcome to the committee hearings. You have 15 minutes here today. If you choose to leave some of the time remaining, then it will be divided among the different parties. The time is yours and so is the floor. Please proceed.

Mr. Richard Paquette: My name is Richard Paquette. I would like to thank the committee for allowing me the opportunity to share the thoughts and concerns I have with Bill 132. I have been involved with the dog business for over 30 years as a very successful dog breeder and kennel owner. I am also a licensed Canadian Kennel Club judge of purebred dogs, including the American Staffordshire terrier and the Staffordshire bull terrier. During the past 20 years, I've also acted in the capacity of a contractor, providing bylaw enforcement and animal control services for various municipalities in my area. I currently provide full animal control and shelter services for the city of Greater Sudbury, with a population of over 160,000 residents. In that capacity, I have been involved in all aspects of animal control and have acted as a prosecutor, provincial offences officer, pound manager and animal control officer. My professional capacity and experience gives me a unique perspective as an expert in many fields. I am willing to share this expertise with this committee in an effort to ensure that Bill 132 becomes the important tool that it can be.

For the past few years, I've watched the media reporting surrounding the issue of dangerous and vicious dogs and have always been disappointed with the approach that some in the media have taken toward this subject. I have been a first-hand investigator in many dog aggression attacks by various breeds against humans and other animals which warrant attention, but in most cases only the pit bull or Rottweiler stories are of any interest to the media. This one-sided approach has been very successful in propagating the myth that certain breeds should be banned, and hence we now see a much-needed revamp of the Dog Owners' Liability Act turned into a ban-the-pit-bull solution to all the problems we have with dangerous dogs.

I support any piece of legislation that would give me the tools required to perform my tasks as an animal control officer. Laws are rules by which community peace and order are kept in neighbourhoods. Law enforcement provides an effective, neutral way of imposing restrictions on people's tendency not to respect shared public space. Unfortunately, Bill 132 in its present form is more of a liability than an asset in the performance of my duties. Animal control is a necessary component in providing protection for residents of the province of Ontario. I take my job very seriously and strive to pro-

vide a safe environment for residents to enjoy themselves in, without the fear of being attacked or injured by marauding or menacing dogs.

The reality of the situation is that we have fewer problems with pit bull incidents than we have with all other types of dogs, both purebred and mixed. In Sudbury, we had 213 bite incidents reported to the health unit in 2004. Of that number, only 11 involved pit-bull-type dogs, none of which were purebred.

Mr. Kormos: I'm sorry, Mr Paquette. I was distracted for a moment. Could you repeat that, please?

Mr. Paquette: In Sudbury, we had 213 incidents reported to the health unit in 2004. Of that number, only 11 involved pit-bull-type dogs, none of which were purebred.

Mr. Kormos: Thank you.

Mr. Paquette: Why, then, have the powers that be decided to sour such an important piece of legislation by hijacking it into a ban-the-pit-bull document instead of the important dangerous-dog legislation it should be? The overwhelming majority of stakeholders in this area have made presentations against this legislation in its present form. All have agreed that certain aspects are long overdue and are of merit. I trust that each of you will carefully evaluate the overwhelming evidence you've heard and make appropriate changes to this bill so that it will become a welcomed tool to be used by enforcement agencies to end the problem of dangerous dogs and, more important, their irresponsible owners.

The present tools we have for enforcement are the Provincial Offences Act and the Dog Owners' Liability Act, but these are missing the teeth to take the bite out of the problem. The reality of the situation is that we can only successfully prosecute problem pet owners who have something to lose. These are generally hard-working members of our community who, in some cases by their own doing but in most cases because of unfortunate circumstances, have come before the courts. These generally responsible owners do show up in court and accept responsibility for incidents which result in infractions. They are not the problem. The reality conforms to the 80-20 rule, which has 80% of the responsible owners causing only 20% of the problems. The other 20% of irresponsible owners create 80% of the problems.

Among this smaller group of irresponsible owners is an element who are very savvy with respect to their rights and very knowledgeable about how to beat the system. They ignore a summons to court, and when found guilty in absentia, they ignore the penalties imposed by the courts. They have no assets to collect, whatever fines the courts impose, and are in fact immune to prosecution. There is no consequence for their misbehaviour. The old summary convictions act, which was rescinded by the Provincial Offences Act, allowed for committal warrants which would see offenders go to jail for such things as non-payment of fines. This day and age of political correctness results in most judges basing fine amounts on an offender's ability to pay, because they know the only way to collect fees and fines from those

who do not voluntarily pay them is through a civil action. Suspended sentences are also a common practice for these offenders.

The job of an animal control officer is very difficult and stressful. Many provisions of Bill 132 will only serve to hinder the performance of our duties rather than help. Time spent enforcing aspects of the act with respect to pit bulls will take away from the routine duties of animal control, including investigation and prosecution of owners of truly dangerous dogs. It will also place excessive demands on police officers, who will undoubtedly be required to deal with the small number of unsavoury individuals who harbour these dogs and who will place the greatest obstacles and challenges for enforcement before us.

Identification of pit bulls as defined in the act will be difficult and subject to challenges. As a long-time dog person and dog show judge, I'm very dismayed that two Canadian Kennel Club breeds, namely the American Staffordshire terrier and the Staffordshire bull terrier, have been included in this group. The vast majority of these purebred dogs are bred by dedicated and reputable breeders.

Animal control officers and shelter owners like myself will have a difficult time with the provisions of the act and will see healthy, friendly dogs euthanized only because they had the misfortune to have a specific genetic makeup or look that is pit-bull-like. Many dogs will be arbitrarily euthanized because of what they look like and not because of any act that would justify their death. The least pleasant aspect of our job is the euthanasia of pets. It is mentally difficult now for shelter staff to provide these services for old, sick, injured or suffering animals, let alone the compounded inevitable euthanasia of friendly, healthy dogs. The mental anguish will do irreparable damage to these animal caregivers, result in negative consequences and lead to many outstanding qualified personnel leaving this occupation and career.

Let me relate a plausible scenario that will be played out in shelters and pounds throughout Ontario in the coming years if this bill is passed. A couple struggle with the pressure of owning a pit-bull-like dog and make the regrettable decision to bring their friendly, healthy pet to the shelter for euthanasia. This could be as a result of various factors such as pressure from neighbours, insurance companies or animal control. They arrive at the shelter having already broken the sad news to young family members, who are shattered and too young to comprehend the reasons. The parents complete the paperwork and say their last goodbyes to their cherished family pet. The owners try to be brave, but pain and suffering are seen in their eyes. They leave the shelter in tears and will always reflect on this sad day for the rest of their lives. The shelter worker invariably shares their grief and begins the unpleasant task, which leads to the inevitable trusting look and bewilderment of yet another healthy, friendly pet as it takes its last breath with a lethal, but humane, injection. They place the small

stuffed toy provided by the children into the plastic bag coffin and store it for burial or cremation.

I am proud to be a resident of Ontario and generally support the initiatives of the government, which works hard to provide solutions to the challenges that face us. The changes of Bill 132 are of such a negative and regressive nature as to shatter my faith in government. If this bill is passed in its present form, we will all share the shame of living in a province that demonstrates no tolerance or compassion for our four-legged friends who give so willingly of themselves in so many ways.

Mr. Chair, animal control is third only to fire and police protection in the personal protection of the residents of Ontario. It is an important component in providing a safe environment to live in.

1430

Please remove the negative aspects of Bill 132, which are the references to pit bulls and breed-specific legislation. Please champion the aspects of Bill 132 that impose higher penalties on irresponsible owners and restrictions on identified dangerous dogs. Give me the tools to do my job.

The Chair: We may be able to get in a quick question from each caucus, beginning with Mr. Miller.

Mr. Miller: Thank you for your presentation. Certainly, you have a unique position as the animal control officer and also as a judge.

In the legislation, of course, there's a description of what makes a pit bull. You mentioned that you judge Staffordshire bull terriers and American Staffordshire terriers, which are in the list of the description of a pit bull. Having had a lot of experience with these dogs, can you describe them a bit and can you also explain why you think they're included in this legislation?

Mr. Paquette: I can explain why I think they should not be included in the legislation. The reason is, they have a very friendly and outgoing disposition. Yes, they are fearless, loyal and very powerful dogs. But they are very friendly. If you're going to have an attack by a Staffordshire bull terrier, it's going to be a licking attack, not an attack of any aggression.

Mr. Kormos: Greater Sudbury Animal Control—you work for the city of Sudbury?

Mr. Paquette: I'm a contractor for the city of Sudbury.

Mr. Kormos: I have to understand: In many communities, different organizations do animal control. Am I correct?

Mr. Paquette: We provide the full animal control service for the city.

Mr. Kormos: Who is "we"?

Mr. Paquette: Our company.

Mr. Kormos: Tell me about that company.

Mr. Paquette: Our company originally started as a dog kennel. In the last 18 years, we have moved into animal control and bylaw enforcement. We provide impound services and pound services.

Mr. Kormos: How long have you done that for the city of Sudbury?

Mr. Paquette: Two years for the city of Sudbury, but 18 years for the area municipalities in Sudbury before it was amalgamated.

Mr. Kormos: So a total of 18 years of experience in Sudbury and the Sudbury area?

Mr. Paquette: Yes.

Mr. Kormos: Over the course of that time, how many dogs have you dealt with? I'm not just talking about bites; I'm talking about the total number of dogs you've dealt with.

Mr. Paquette: As an example, last year we took over 1,600 pets into our shelter for impoundment.

Mr. Kormos: So over 18 years—

Mr. Paquette: Quite a few. You do the math.

Mr. Kormos: Your conclusions regarding the inclusion of breed-specific bans are based on those 18 years and those thousands upon thousands of dogs that you've had contact with?

Mr. Paquette: Yes.

Mr. McMeekin: I really appreciate your coming out. I was moved, in your presentation, by your belief in the government and the power of government. You said that you had lost confidence, and I appreciate that. It troubles me when I hear that. I want to restore whatever lost confidence you have. I'm wondering if you could quickly indicate for us specifically what three things you'd like to see changed in this bill.

Mr. Paquette: My problem is that I feel that pit bulls and pit-bull-like dogs represent only 5% of the problem, but the majority of the amendments in the new Dog Owners' Liability Act are overwhelmingly focused on this pit bull problem. I'd rather that you deal with the other 95% of the problem, which are the true, identified dangerous dogs that we have to deal with each year.

Mr. McMeekin: So target more broadly; target the real problem?

Mr. Paquette: Target the real problem of dangerous dogs and get away from this pit bull thing, which, in my opinion, has only hijacked the whole thing and is not really a workable document. I'm going to be bogged down in chasing my tail, so to speak—a dog phrase—worrying about pit bull calls and about people complaining about the perception of a menace, rather than working with the actual dogs that have been identified as causing problems and as dangerous dogs.

The Chair: Thank you for coming in today.

Mr. Kormos: On a point of order, Chair: That's why I was curious about whether he worked for the city or was a contractor—up to this point, the committee has not entertained requests for reimbursement by parties attending here. Obviously, the committee is not doing widespread travel across the province. I'm suggesting that this committee should advise people here today—clearly, here's somebody who came in from Sudbury, I presume at his own expense; he wasn't compensated for it by the city of Sudbury. I'm suggesting that this committee, or the Chair, be authorized to entertain requests for compensation for travel and reasonable compensation for meals.

The Chair: That's not a point of order. The procedures were very clearly discussed and agreed upon during the subcommittee meeting. I presume the clerk has advised deputants of their ability to claim reasonable travel costs should they incur them.

Mr. Kormos: I think the clerk is querying your comment. Why don't we just do it here and now? If you want reimbursement for travel, get a hold of Mr. Arnott, the clerk, before you leave and arrange that adequate, fair compensation be given to you. You deserve it.

The Chair: Mr. Kormos, kindly direct your comments to the Chair and not to the audience.

Mr. Kormos: I apologize for not directing those comments to the Chair, but I was talking to you folks.

SYLVIA HUMPHRIES

The Chair: Is Sylvia Humphries in the room?

Come on up. Welcome to the hearings this afternoon.

Ms. Sylvia Humphries: Thank you. This is a different procedure for me. I'm not really used to this.

The Chair: It's really very informal and there's not much to it. You have 10 minutes to impart your words of wisdom to us. Please begin by stating your name for the transcript from Hansard. If you leave any time, it will be divided among the parties for questions. That's basically it. Please proceed.

Ms. Humphries: I have a cold so I may have to have my husband continue, but I will go ahead.

My name is Sylvia Humphries, and of course we're in Barrie. I am here today as a concerned citizen speaking for the proposed Bill 132 regarding the banning of pit bull dogs and the proposed stiffer penalties for irresponsible dog owners. I am not a dog owner and I don't make my living from dogs.

I would like to first relate an incident with a member of my family and a strange dog. About 6 o'clock on a Friday in November in 1999, my husband and my 12-year-old son went to the Wellington Plaza here in Barrie. They parked beside a pickup truck. The bed of the pickup was covered with a truck cap. There was a large dog inside the back truck cap and it was barking and throwing itself against the back cap window. My husband went to the video store; my son started toward the grocery store. What happened next was unfortunate. The dog broke open the cap window, ran and lunged at my son, knocking him down and biting into his upper thigh. Luckily for us, a motorist stopped, opened his rear passenger door, and he and my son fought off the dog and managed to get refuge in the back of the car. My son's pants were torn and there were six bleeding puncture wounds in his leg. The dog ran loose for several moments until a young woman came out from a store and called the dog, eventually capturing it and securing it in the front of the truck. Witnesses comforted my son and called the police and waited for them to arrive. The woman stayed as well. It was not her dog; it was her mother's.

There was a half-hour wait for the police. The officer took the information and witness accounts. No charges

were laid and we were never subsequently contacted. My husband took my son to the hospital where his wounds were cleaned and a "help sheet" on dog bites was given to them. The concern of rabies was explained. We called the health unit and left a message. We called the Barrie animal care officer and also left messages. The health unit was very helpful to us. They organized a visit to the owner and ordered the dog, a pit bull cross, to be kept at home. Records eventually showed that the dog had all its shots, but the rabies wait was excruciatingly stressful, with little specific information available to us.

When we contacted the owners, we got anger and rage from them. They were furious that their dog was to be kept in and that we would want them to pay for a new pair of pants. Did we know the hardship we caused them? When we contacted a lawyer to pursue a liability claim, we were told that since the dog's owners were renters, it was unlikely that there was insurance coverage available, and the cost of litigation would far exceed any reward. After two weeks, we heard no more from the health unit, the police or the owner. Our son, now 17, is still terrified when large dogs are around.

We learned the following:

Pit bulls are dangerous.

Pit bulls will attack when not provoked.

There are irresponsible dog owners.

The combination of a pit bull and an irresponsible dog owner creates a known threat to society.

There appears to be no requirement for a dog owner to have training if he or she owns a dangerous dog.

There appears to be no police obligation to lay charges in the case of dog attacks or to provide any follow-up for the attacked person or their family.

One must be a self-advocate to report and to initiate an investigation of the attacking dog. There is no automatic procedure.

There is no tracking system that would tell us if this dog has attacked before or since.

There is no requirement for a dog owner to have insurance.

There are currently no laws which specifically protect a person from this type of dog attack. My son is still traumatized.

1440

To summarize, without warning and without provocation, a dog attacked my son. Pit bulls and pit bull crosses are unpredictable. The owner of the dog did not, in my estimation, exercise reasonable precautions to prevent the dog from attacking or biting my son. The back window latch on the cab of the truck was not secure and the dog was not muzzled.

As parents, we alone were responsible for looking after our son after the attack and making sure he was OK. We are especially grateful that there are regulations in place regarding rabies shots for dogs. This protected my son. Regulations such as the proposed Bill 132 could have prevented my son's encounter with a vicious dog.

Pit bulls are dangerous, they are unpredictable and they can cause great harm. I wouldn't necessarily say

there are like lions and tigers, but the relationship seems close. I wouldn't want to live beside one and I don't want my children or any other children to be near them. Children and families need protection in legislation. Voluntary compliance is useless. I am pleased to see that the proposed legislation bans pit bulls and hands out much stiffer penalties for owners of vicious dogs.

The Chair: Thank you very much. We will have time for about a minute per—

Applause.

The Chair: For those attending, a show of recognition is not permitted at a committee hearing.

Mr. Kormos, yours is the first question.

Mr. Kormos: Thank you for your comments. Your story is similar to Ms. Knechtel's, who was here earlier. In her case, it was her dog that was attacked. In this case, it was your son.

Again, there is the issue of the debate about a breed-specific ban versus this broader vicious-dog ban; that's one issue. The other issue you raise, though, should be of concern to every member of this committee: that the existing legislation—which, as I explained to Ms. Knechtel, just as in her case, in your case—provided for bringing that dog owner to court, having an assessment of that dog to determine whether it was sufficiently dangerous to warrant being euthanized, put down, or other restrictions. None of that was done in your case. It isn't for you to do; it's for the public authorities to do.

I just say to committee members that that should be of concern to all of us, especially since all of the contents of Bill 132 similarly require public officials to be doing this work, be it prosecuting and going after owners of bad or vicious dogs or even the seeking out and identification of pit bulls and making sure they're pit bulls, should the government proceed and pass the legislation. That's consistent with what we were told earlier by a municipal official about the lack of justices of the peace. We don't have the JPs, the courts, to go to do these. I find that very, very troubling.

I thank you folks very much. You made reference to, even if you sue the people, if they're impecunious, you're sending good money after bad. You can get a judgment and it's worthless because there's no insurance; there's no mandatory insurance. And without Criminal Code charges, there's no access to the Criminal Injuries Compensation Board.

We talked about that on Monday, friends, and that's why I believe there's a need for Criminal Code amendments as well. The dog liability act makes dog owners liable—basically presumed to be negligent, hence liable—for the damage caused by their dogs. We need criminal legislation to make dog owners criminally culpable for the damage caused by their dogs—damage to other animals, damage to people, regardless of the dog breed.

The Chair: Thank you. Mr. Zimmer.

Mr. Zimmer: Thank you very much for your very reasonable and moderate submission. This is probably a good time to just make sure you and everybody else here

understand why in many ways, in most ways, this is a very reasonable piece of legislation. Let me just point out for the record what the legislation contemplates. Essentially, we're saying to a pit bull owner, "You can't import them any more, you can't breed them any more, and anybody who's got a pit bull, if you want to keep it, we're asking you to do three simple things: Keep it on a leash in public, keep it muzzled and get it neutered. Then you can keep that pit bull until the end of its natural life, and the breed will die off."

Like your submission, your deputation, here today—it was a reasonable, responsible one—I suggest to you and everyone here that the legislation itself is reasonable. Spend a few dollars on a muzzle, spend a few dollars on a leash, \$150 or perhaps \$200 to neuter it and you can keep your dog to the end of its natural life. That's a very reasonable obligation to place on pit bull owners, given the great harm they do, and for the protection of the public.

Mrs. Munro: Thank you very much for coming here today to give us an example of the unfortunate circumstances you experienced. However, I have to say that in listening to many of the deputations we've heard today, I think we've certainly heard a message in terms of the limitation of the bill in being breed-specific. When you consider your experience, my question to you is that by limiting it to the breed—it's not a breed, but to the category of pit bull—we're limiting the kinds of opportunities and safeguards that others should have in our community. If your experience had been with a dog of a different breed, would you be here today supporting a breed-specific ban for a breed that you did not suffer from in this particular incident?

Ms. Humphries: As far as I understand, there's one part about public safety in relation to dogs, including pit bulls, and then there's the other part about vicious dogs and the penalties being doubled for them causing harm. I understood that there were two general parts to the legislation.

Mrs. Munro: You're quite right. But I guess our concern, or at least the concern we've heard, is that there is a special status attached to this particular type of breed. In listening to the other presenters, the message has come back that really we should be talking about all dangerous dogs. That was really my question to you: the importance of us as legislators looking at mechanisms, because you certainly provided your own personal experience where the mechanisms in place today are not satisfactory. So we should be looking at mechanisms that would provide the kind of safety and surety for everyone, regardless of the breed.

The Chair: That concludes the time we have allotted for you today. Thank you very much for having come in, Ms. Humphries, and for making your presentation to us.

MARIANNE ROBERTSON

The Chair: Is Marianne Robertson in the room? Welcome. Make yourself comfortable. I think you've

been in the room long enough to get the general gist of the procedures. You've got 10 minutes today. If you leave any part of it, it will be divided up for questions. The time is yours. Please proceed.

Ms. Marianne Robertson: Thank you. I come forward as a responsible dog owner. Two of the three dogs in my care are named in Bill 132. I own an unregistered American Staffordshire terrier, which I also refer to as a pit bull, I own a Staffordshire bull terrier, and the third dog is a German shepherd.

1450

I would like to address one point that was raised earlier: whether you'd rather be bitten by a Mexican hairless or a pit bull. Dog bites of any kind should be viewed as unacceptable, and we need to change public perception: Aggressiveness in a small-breed dog can be just as serious as in a large-breed dog.

A second point I'd like to address is drug dealers and the like moving on to other breeds. Are people who operate without regard to the law all of a sudden going to say, "Oh, pit bulls—illegal"? No, I don't think so. If the purpose of Bill 132 is to extinguish the pit bull breed, it is not going to be effective in doing that. These people will always have access to getting a dog of their choice. Banning the breed will only heighten the appeal of the dangerousness of these dogs to these people.

I compete with my dogs in agility and flyball, and have done so since 2002. To compete, a dog must have obedience training and continued practice and training in the chosen sport. The other thing is that the dog must be socialized, able to get along with strange people and strange dogs under a variety of conditions. To get there, I have participated in the following classes with my dogs: puppy socialization, beginner obedience, off-leash obedience and advanced obedience to prepare for the Canine Good Neighbour test.

The Canine Good Neighbour test was passed in 2003 by both of my dogs which are named under Bill 132. The certificates issued by the Canadian Kennel Club state: "By participating in and passing these tests, you have helped to ensure that our most favoured companion, the dog, is accepted as a valued member of the community." My dogs passed that test easily.

Has anybody seen an agility competition, with the jumps, the tunnels, the A-frame—the super dogs? There are over 10,000 dogs registered with the Agility Association of Canada. Of those dogs, there are four American Staffordshire terriers, 29 Staffordshire bull terriers and one pit bull terrier—that's mine. The dogs I've just listed have earned titles with the Agility Association of Canada. My dog is the only pit bull terrier in Canada with an Agility Dog of Canada title, an Advanced Agility Dog of Canada title and a Novice Agility Dog of Canada title.

Flyball, which I also participate in with my dog, is something you have to truly be there to really understand what it's all about. It is loud and it is exciting, but our pit bull type dogs are able to perform successfully under these stressful conditions. My pit bull is the 18th-ranked

pit bull in the North American Flyball Association. She has 2,471 points and earned her title of flyball dog champion.

Did you know that there are over 15,000 dogs registered in flyball? There are 223 pit bull type dogs in flyball and many, many more crossbreeds. Staffordshire bull terrier crosses are especially popular because they are small and fast. Ontario is one of the largest and most active regions in flyball, with 57 active teams. Every year, there are 25 to 30 tournaments in Ontario, and the largest tournaments host over 100 teams. Teams come from as far away as Michigan, New York, Vermont, Texas and Nova Scotia.

Travelling teams will spend approximately \$1,500 per tournament on travel, accommodations and food. The largest tournaments will result in more than \$100,000 of spending in the economy for that weekend. Banning pit bull type dogs will directly result in teams not coming to Ontario to compete and not spending their money here.

My indication is that if this bill is passed, pet-friendly hotels will not accommodate pit bull type dogs. I called a couple of hotels that we used for our flyball tournament to find out, and early indications say no. Despite assurances, there are too many what-ifs in the minds of owners, and this is why I do not compete in Kitchener.

To date, I've spent almost \$7,000 on dog training, with the various classes and agility equipment and on-going lessons. I don't call it spending; I call it an investment.

Bill 132, as it is worded, will effectively end our competitive careers. Our dogs cannot practise or compete while leashed and muzzled. In fact, an improperly fit muzzle can kill a dog if it cannot pant properly to cool down, not to mention that a muzzle will provide a false sense of security if it's fit improperly and is therefore ineffective.

The provisions of Bill 132 providing exemptions in conjunction with dog shows are not clear. In clause 20(2)(d), "the Lieutenant Governor in Council may make regulations," which are not suggested or defined in this bill.

Bill 132 will change the social atmosphere in which we live with our dogs. It will make it impossible for the restricted pit bulls allowed under this bill to ever overcome negative stereotypical images. People will treat muzzled dogs differently, even if the dog was never a threat to begin with. It makes travelling with our dogs difficult in Ontario because of limits on accommodations and an unknown risk of seizure in a strange place.

Bill 132 encourages doggy profiling. It is basing a law on the inactions or actions of a few and assuming all are similar, and we're not. It sends us the message that all you think these dogs are good for is animal research, and they're not.

The Chair: Just to inform you, you have about two minutes remaining.

Ms. Robertson: In conclusion, I would like to say that alternatives to Bill 132 do exist. I've included a couple of examples for reference, such as California's potentially

dangerous dogs and vicious dogs act and Calgary's dangerous-dogs bylaw. Both of these pieces of legislation do not name specific breeds and look after the dangerous dogs, not just pit bulls.

The Chair: Thank you very much. We have time for just one question.

Mr. McMeekin: Marianne, you strike me as a responsible dog owner.

Ms. Robertson: I am.

Mr. McMeekin: You've made quite a cogent presentation. Do you feel, as a responsible dog owner, that this bill targets you?

Ms. Robertson: I feel restricted for no reason by this bill. Why? Why me? Why should I feel threatened by next door neighbours who can make a complaint about my dog, and my dog will be seized for no reason? I'm very afraid for my dogs. I love my dogs very, very much, and this bill concerns me.

The Chair: Thank you very much for coming in to give us your thoughts today.

BRACEBRIDGE ANIMAL HOSPITAL

The Chair: Is there a representative here from the Bracebridge Animal Hospital?

Welcome. You have 15 minutes to present to us today. Please begin by stating your name for Hansard. If there is any time remaining, it will be divided among the parties for questions. Please proceed.

Ms. Michelle Holmes: Thank you. My name is Michelle Holmes. I'm a registered veterinary technician at the Bracebridge Animal Hospital. I also instruct puppy socialization classes and clicker training obedience classes, and consult with clients on behavioural problems.

I am here today because I disagree with Bill 132. I am also here to give a voice to those colleagues, clients, friends, family and acquaintances who could not be here.

There are an estimated 3.7 million dogs in Canada, and they all have the potential to bite, no matter what breed they are. In my puppy socialization classes, I teach bite inhibition, so that if a dog is ever put in a situation where it feels the need to bite, it will not apply pressure that can cause a more serious injury. There are many things we can do to lower the risk of dog bites, such as encouraging reputable breeders, proper socialization and obedience training, spaying and neutering, and education. Unfortunately, children are the most common victims, which calls for us to educate our children on how to approach strange dogs and the importance of responsible ownership.

1500

Ultimately, I believe responsibility should rest with the owner. There should be significant fines for people whose dogs have been involved in a bite incident. Something that our country is lacking is that it is not mandatory to report a dog bite. We as a province should be setting up criteria to identify dangerous breeds, requiring them to be spayed or neutered, muzzled and leashed in

public, and posting signs around their property, regardless of what breed they are. Another thing we should be enforcing is licensing dogs, the same as we are required to license a firearm.

I ask myself what the cost of enforcing such a ban would be to the province and I think that this money could be better used in areas such as education, health care or finding homes for our homeless, just to name a few.

One of the many reasons I am opposed to breed bans is that "pit bull" is not a specific breed, but rather a general term used to describe a number of breeds and crossbreeds. Who will decide whether a dog is a pit bull or a pit bull cross? On several occasions I have been asked if my purebred black Labrador retriever is a pit bull cross. How would one prove their dog is not a pit bull or pit bull cross, especially when many dogs are adopted from the thousands of homeless animals at SPCAs, humane societies and rescue organizations, as the history of these dogs is next to impossible to trace? In my opinion, banning a breed is like banning a particular race or religious group from this province. These pit bulls are beloved family members.

Another question I ask myself is, if this legislation is passed, who will be responsible to destroy these innocent animals that are left in limbo? I know that at our animal hospital we will refuse to euthanize a young, healthy, well-tempered animal for our own ethical reasons. I myself, along with many of my colleagues, refuse to take part in a euthanasia that is required due to this legislation. If we did ban pit bulls, then these irresponsible owners will move on to another breed and the dog bite statistics for that breed will rise.

The Ontario Veterinary Medical Association has looked at whether breed bans have been effective in other jurisdictions. In Winnipeg, serious attacks by pit bulls have decreased substantially since pit-bull-type dogs were banned, but serious attacks by other breeds such as Rottweilers are on the rise. So where do we draw the line? How many breeds do we need to ban before we realize it is not the dogs but the owners? In my experience, having done two high school co-op placements, volunteered and worked at the local SPCA, two years of school for a veterinary technician, teaching classes and three years working in animal hospitals, I have not had a problem with any of these pit-bull-type breeds, but that is not to say that I never will. I have had problems with other breeds but I do not believe any of them should be banned.

Tomorrow evening I will be instructing a puppy socialization class. In that class, I will have an American pit bull cross and three Staffordshire terriers that will be attending. These are examples of responsible owners. An example that aggression is not breed-specific is that last week I assisted to euthanize an 18-month-old cairn terrier with severe dominance aggression and a four-year-old collie who had become unpredictable and broke the skin on the owner's hand. These are also examples of responsible ownership as these people recognized their

dogs as dangerous and made this difficult decision, but in the end prevented something more serious from happening.

An example of irresponsible ownership is that a few months ago we had a golden retriever puppy who was very dominant and escalated to a severely aggressive six-month-old puppy. This puppy should never have been placed in a home with children, especially because the breeder recognized this puppy as the dominant one of the litter. When I recommended to the owner that this dog be returned to the breeder, the breeder took it back and after a short time convinced the owner to take the dog back. The breeder and owner are at fault in this circumstance and put these children at risk. This is why education is so important. There are great educational programs through St. John Ambulance therapy dogs and Doggone Safe, a non-profit organization working to prevent dog bites, that should be implemented into our school systems.

The media does like to exploit pit bulls as dangerous dogs. But what about dogs like Norton, a five-year-old American Staffordshire terrier cross from Waterloo who was credited with saving his owner's life after awakening one of his owners to alert him that his wife was having a severe reaction to a spider bite? In 1999, Norton was inducted into the Purina Hall of Fame. Or what about Petey, a two-year-old American Staffordshire terrier who was rescued from a local humane society and now brings joy to many residents at a retirement home with regular visits as a St. John Ambulance therapy dog?

Maybe we should also be focusing our energy and time on amending laws that consider dogs to be property. What about the unimaginable cruelty that some of these dogs endure at the hands of people, yet they remain loyal and devoted to us? If this legislation is passed, these pit bulls will be a great loss for our province, as some of the words used to describe them are "courageous," "intelligent," "tenacious" and "spirited."

I would like to say that I do sympathize with anyone, young or old, who has suffered a dog bite or a dog attack, as it is something that can haunt you forever. However, as has been said, we should punish the deed, not the breed.

Thank you for taking the time to listen to what I had to say. I hope you will take some of what I had to say and look to responsible ownership as opposed to banning breeds.

At this time, I have some pictures that I'd like to pass around.

Mr. Kormos: Tell us what these are.

Ms. Holmes: Sure. This is an example of an irresponsible owner. This is a litter of six Staffordshire puppies that came into our local SPCA after their mother was allowed to run at large and was decapitated by a snowplow. These puppies were two weeks old when they were brought into the local SPCA. If the local SPCA had not taken them in, these dogs would not have survived. These puppies had to be fed every two hours. Fosters with the SPCA have been working very hard with these dogs. They've been socializing them really well early on and

three of these puppies will be in my puppy socialization classes.

Mr. Kormos: Is this dog with the droopy ears a pit bull by association?

Ms. Holmes: I guess, because he's associating with the others.

Interjection.

Ms. Holmes: Yes, that's a basset hound who's associating with these.

The Chair: Please address comments through the Chair or to the Chair.

Mr. Kormos: I apologize, Chair. I regret that.

The Chair: I know you do, Peter.

Ms. Holmes: If anyone has any questions at this time, I'm more than happy to answer.

The Chair: Mr. Miller.

Mr. Miller: Thank you very much, Michelle. You come from my hometown, so I'm glad I get an opportunity to ask you a few questions. You've obviously had a lot of experience, and you talked about being against a specific breed ban as part of this legislation. I note that in Italy there are 92 breeds that are currently banned. I don't know whether this is opening the door to that, but we could be heading that way.

In this specific legislation, they basically ban a pit bull, which as you've pointed out is not a specific breed. Then they name the Staffordshire bull terrier and the American Staffordshire terrier as being a couple of the breeds that are part of that—as being called pit bulls. Have you had much contact—obviously you've had some—with those breeds, the Staffordshire bull terrier and the American Staffordshire terrier?

Ms. Holmes: Yes, we have a number of clients who have these dogs. The clients we see on a regular basis are responsible owners. Friends of mine personally also have an American pit bull terrier, and we have a number of Staffordshire terriers that come through our clinic.

Mr. Miller: Are they particularly vicious types of dogs?

Ms. Holmes: No. One I would refer to—her name is Fudge—if you ever met her, is like a Lab in a Staffordshire terrier body. You wouldn't know it. She's a happy-go-lucky, fantastic dog. We've never had a problem with this dog, even at times when we are taking blood samples or having to sedate her or anything like that.

Mr. Miller: Why do you think the government is banning these specific breeds if your experience with them is that they aren't vicious?

Ms. Holmes: I think there are incidents that have occurred through irresponsible ownership with these particular dogs that we're classing as pit bulls, so we're looking toward the specific breed. But it's not the specific breed, it's these owners.

The Chair: Thank you. Mr. Kormos?

Mr. Miller: I have more questions, but he's cutting me off.

Mr. Kormos: After listening to the woman before you, who calls her dog a pit bull, I'm wondering if all of a sudden there will be thousands of owners of bull

mastiffs, variations on bull mastiffs and anything but pit bulls, should the legislation pass. Since there's no genetic test and since the Attorney General can't pick one out of a lineup, we know what that means.

Ms. Holmes: Exactly.

Mr. Kormos: Were you here when Ms Knechtel was here? Her Shih Tzu was attacked by, I believe, a pit bull or what was identified as one—

Ms. Holmes: Yes.

Mr. Kormos: —and we had a woman whose young son was attacked. This pit bull got out of the back of a truck, and boom, leaped on this kid. You're a technician. What's going on here? How do you explain these dogs? In both these instances, they happened to be pit bulls. It was German shepherds that attacked a young woman in St. Catharines yesterday and sent her to the hospital. It was bull mastiffs that attacked the four-year-old kid in Ottawa, notwithstanding what the Toronto Sun says. How do you explain this? What's going on? What's wrong with these dogs, if anything? I presume there's something wrong. I don't want these dogs around.

Ms. Holmes: I think it's the owners. There's this status that you get with owning one of these pit bulls. There are responsible owners—and there are many of them—but unfortunately they get flooded over by these people who aren't great members of society to begin with.

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Mr. Kormos: Maybe if we just passed a law saying that all pit bulls have to wear pink bows, then the macho bikers wouldn't want to walk with them.

Ms. Holmes: Yes, perfect.

Mr. Kormos: Think about that: We could feminize and take away the macho quality of the pit bull, and boom, there goes the biker gang member/drug dealer market.

Ms. Holmes: Perfect.

The Chair: On that note, thank you very much, Mr. Kormos. Mr. Zimmer?

Mr. Zimmer: I just want to follow up on something Mr. Miller referred to and that came up in the morning and indeed in your comments; that is, the suggestion that this legislation is the first step on the way to adding 25, 30, 50 or 100 different breeds. If you read Bill 132 carefully and clearly, you'll see there's no provision in that bill that authorizes or gives the government any power to add breeds of dogs to the list by regulation or otherwise. The legislation is limited to the breeds in the definition. So the idea that it's the thin edge of the wedge is incorrect.

Ms. Holmes: Who's to say there wouldn't be another proposed bill that would list other breeds? Another example they looked at with the OVMA is that in France they banned a number of breeds, and they started to import Barbary apes as watch animals, who attack people with sharp talons and teeth and that sort of thing. Who's to say what we move on to? We'd ban a breed and move on to something else.

Mr. Zimmer: There is no provision in Bill 132 for anything other than in that definition.

Ms. Holmes: And why do we ban—like I said, this is like trying to ban a particular race or religious group from this province. There are a certain number of dogs that are considered—

Mr. Zimmer: Because they're qualitatively different in the danger when they attack people and/or other animals. They're just qualitatively different.

Ms. Holmes: I have never, ever been attacked by a dog such as a pit bull type of breed. I have been bitten by a chihuahua, but we don't seem to be concerned about those. I've had a chow come at me; we're not concerned about those.

Mr. Zimmer: Did the chihuahua take your leg off?

Ms. Holmes: No, but he did draw blood.

Mr. Zimmer: So does a mosquito.

The Chair: Thank you very much for your deputation this afternoon and for your thoughts, which very clearly provoked some interesting debate here.

SANDY BRIGGS

The Chair: Is Sandy Briggs in the room?

Ms. Sandy Briggs: First of all, I would like to say that I am representing Near North Animal Control and EPS Training Associates as well as myself. That was not included on the list. It was just my name on the list.

The Chair: Thank you. Welcome to the committee. I think you've been here for a little while, so you've got the gist of the rules. You have 10 minutes for your presentation. Please begin at your convenience.

Ms. Briggs: My name is Sandy Briggs. I'm a life member of the Canadian Kennel Club and the Labrador Owners Club and do the animal control for three townships near North Bay. I have been involved with dogs in many different capacities for over 50 years. I have been breeding dogs since 1960, and not only judge dogs in obedience trials, temperament tests and retriever field tests, but also instruct classes in obedience, tracking, agility and retriever field training. Over the years, we have trained hundreds of our dogs and dogs belonging to other people.

I would like to go on record as being strongly opposed to Bill 132 in its current wording. I feel that the Calgary vicious-dog bylaw or the bill proposed by MPP Julia Munro are a much better choice for the control and management of aggressive, dangerous and vicious dogs. A copy of the various sections of the Calgary bylaw is attached to your packets.

I started training dogs in 1961 and have been instructing training classes since 1966. During the years that I have been instructing, judging and exhibiting, I have seen many different breeds and types of dogs, in all sizes and shapes, with many varied temperaments. I have personally been bitten by a Labrador cross and a small mixed-breed mutt. Both incidents required medical attention. I have been threatened by many dogs of various descriptions, including a chihuahua, Rottweiler,

Doberman, shepherd, Dalmatian, Pomeranian, golden retriever, springer spaniel, Chesapeake Bay retriever, Akita and a variety of crossbreds. My contacts with the purebred pit-bull-type dogs included on the banned list have all been positive.

When it became illegal to spare the rod on children and as society became more permissive, many kids failed to develop any respect for anything or anyone. Parents expect teachers to give their kids manners and an education, but teachers have their hands tied by law and cannot threaten them with failure. Kids are taught in schools that if they are slapped or threatened by any adult, they can call the police, claim abuse, and the police will lay charges.

These first couple of generations that have been raised with a you-can't-touch-me attitude are the young adults of today. In many cases, they are dog owners. Some have not achieved any respect for themselves. How can they be expected to get respect from and give respect to an animal? Dogs have to respect their owners and the owner must be the pack leader. Without a human pack leader, the dog will become the pack leader in a home and in some cases will terrorize the family. These dogs are often dumped at shelters, put down, abandoned in the country or given away for someone else to sort out.

Dog-training methods have changed from the "teach, correct and praise" method to training only with positive motivation and no physical corrections. Not all dogs want to please all of the time any more than we can please everyone all of the time. When a dog lunges at another dog, a quick jerk and strong verbal correction will achieve a more lasting effect than just telling the dog, "That wasn't nice."

We regularly see children misbehaving, running around, screaming and even yelling at their parents in restaurants, shopping malls and other public places. Are children banned from public places? Minors are a problem in many areas and some tease and abuse dogs tied up or fenced in. In many cases, they cannot even be given a warning by the OPP because they are under age 12.

In the 15 years that we have been doing the animal control in our area, 99% of the dogs that have created a problem, either threatening to bite, actually biting or causing physical injury through their aggressive behaviour, have been crossbreds. Some owners want a dog that gives them a macho-type status. Aggressive behaviour from the dog is a big joke to many of them and they have no idea how to control the dog except by yelling at the dog or threatening him. They then pass the blame for the dog's behaviour to anyone but themselves.

We have been to court with several owners whose dogs have created injury, and seen the court tell the owners to keep the dog tied up at home, only to have the dogs running at large again within 48 hours. The courts must deliver a stronger message when the animal control officers, bylaw officers and OPP take these dogs' owners to court and win convictions. A vicious or dangerous dog label would do this.

Identifying one specific type of dog and saying that they are all bad, aggressive, nasty, liable to bite or attack

is the same as saying that cars are the cause of accidents, rather than the person behind the wheel. We don't ban transport trucks from Ontario when tires come off and kill people. We don't ban cats that scratch people or wolves that kill livestock. Red Corvettes, whose owners get the most speeding tickets in Ontario, are not banned. Assuming that all dogs of one type have the same personality, mentality, IQ and manners is illogical and discriminatory. The royal corgis in England have made headlines several times for nipping but are not banned in England and are a popular breed worldwide.

The pit bull ban in England has been lifted because it was found to be unenforceable. How does the Ontario government plan to effect and enforce such a bylaw? Who is going to train people, and pay them, to enforce it? There is no positive way of identifying a breed of dog. There is no DNA test that will say, "This is a Rottweiler" or "This is a Great Dane." The CKC requires that purebred dogs be identified by tattoo or microchip before being registered, and some shelters chip dogs that are adopted. The government requires all cattle to have ID tags so that they can always be traced back to their home farm in case of BSE or any other problems found in the animal during its lifetime. These tags, chips and tattoos do not identify the breed or type of animal; they only give a means to trace their breeder or owner.

The CKC is internationally recognized and respected for its integrity. Purebred dogs in Canada are covered by the Livestock Pedigree Act. Reputable breeders belong to the Canadian Kennel Club and abide by its code of ethics and rules regarding registration.

Responsible breeders of purebred dogs spend billions of dollars a year in purchasing breeding stock, entry fees for competitive events, equipment, training supplies, dog food, veterinary services, insurance, air travel, motels, restaurants, vehicles and fuel. Money is spent getting the dogs' genetic clearances. Event-giving clubs will get less revenue with which to pay hall, arena and ground rentals and hire judges, and will have less to use to offer educational seminars, do public education and organize clinics.

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Most responsible, reputable breeders need a second income to support their hobby, putting every cent they make from puppy sales back into their breeding stock. Many have devoted a lifetime to developing their bloodlines and ensuring good temperament, soundness and breed type.

Media hype ensures that dog bite stories get covered far more thoroughly and repeatedly than any other story. Sensationalism creates sales. Sensationalism tends to distort the truth and not give all the facts. Because serious car accidents are daily occurrences, they don't rate the same coverage. The story may not make the front page, except in a local paper. A driver who hits and kills a deer or moose might get mentioned in the news, but the story draws more attention and follow-up if there is an orphaned fawn.

In the past, we have had waves of Rottweiler-type dog attacks. We have also seen a wave of shepherd-type dog attacks. Places that have put specific-dog-type bans in place have not reduced the number of dog bites. The number of bites is just credited to other types of dogs, and in some cases the number of bites has actually increased since the pit-bull-type dog has been banned. By banning or restricting one type of dog, the buyers and suppliers will simply switch to another type of dog.

Many people cannot identify a dog by its breed and often only know the most common breeds.

The Chair: For your information, you have about two minutes left.

Ms. Briggs: Any short-coated, medium-sized black dog is a Labrador to many people. The type of dogs covered in Bill 132 include dogs from 30 pounds to 80 pounds or more, from small to big in height, with different characteristics, many of which also appear in cross-breeds.

A pit bull is not a specific breed, and by lumping purebred, registered dogs of similar type in with them, a major disservice is being done to the responsible and reputable breeders of the purebred dogs, who put a lot of money into the local, provincial and Canadian economies.

The Dog Owners' Liability Act and the dangerous-dog bylaws that many municipalities already have need to be tightened up and enforced more strongly with universal penalties from the courts. The well-written, enforceable vicious-dog bylaw from Calgary is not breed- or type-specific. Place the blame where it belongs: on the individual dog, regardless of breed, type, size, colour or sex. Under Canadian law, we are innocent until proven guilty. Even nuisance and stock-killing wild animals are given a second chance with relocation.

I have also attached the Ottawa dog bite statistics for the last five years, the last couple of pages of the package I gave you. They have combined some breeds. They list shepherds, and then they list other things, but the top two breeds for bites in the last five years up there are shepherds and Labrador retrievers. Pit bulls are not at the top.

Thank you very much for your consideration. I don't think I've left you any time for questions, but I'm willing to answer any if you have any.

The Chair: Actually, you have just enough time for one quick one from Mr. Kormos, if such a thing is possible.

Mr. Kormos: Hey, I'm the guy with the punch lines, OK? Thank you, Chair.

Thank you kindly. Again, you're an animal control officer up around North Bay?

Ms. Briggs: Yes, I am. That's right.

Mr. Kormos: How many years?

Ms. Briggs: I started with Powassan and have done it for 15 years.

Mr. Kormos: Fifteen years? How many dogs have you handled in the course of 15 years as an animal control officer?

Ms. Briggs: Hundreds.

Mr. Kormos: Hundreds over the course of 15 years? Were you here when the Sudbury animal control officer talked about pit bulls?

Ms. Briggs: Yes. I know Richard.

Mr. Kormos: Oh, maybe you're in collusion. But were you here when he talked about pit bulls biting but they being the smallest of minorities, nowhere near the top of the list?

Ms. Briggs: That's right.

Mr. Kormos: Do you have any experience—

Ms. Briggs: I've had one incident with a pit-bull-type dog.

Mr. Kormos: Maybe they don't have any pit bulls up around North Bay.

Ms. Briggs: Yes, we do. I have had one incident in 15 years. All the others have been crossbred shepherds, huskies, collies.

Mr. Kormos: Not shepherds.

Ms. Briggs: Yes, shepherds.

Mr. Kormos: Rin Tin Tin?

Ms. Briggs: Yes. Now, I want to clarify this: When people say "shepherd," it is not necessarily a purebred, registered shepherd. It's something that's black and tan, has prickly ears and a long tail.

Mr. Kormos: Because it was two Dutch shepherds, very vicious, that attacked that young woman yesterday in St. Catharines.

Ms. Briggs: But it's the same thing as the Labrador. People say if it's short-coated, black and medium-sized, it's a Labrador. It could be anything.

The Chair: Thank you very much for having come in today.

MAUREEN PYKE

The Chair: Is Maureen Pyke in the room?

Hi, Maureen. Welcome to our hearings today. Maureen, you've been here a little while. You get the general gist of it. You've got 10 minutes to make your presentation to us. If you leave any time, it will be divided among the parties. Please proceed.

Ms. Maureen Pyke: I've got my watch. I'd like to leave time for questions.

There have been, and will be, a number of experts who will present my shared opinion that breed-specific legislation is not effective. I'm going to take this time to tell you about my breed, the Staffordshire bull terrier.

The Staffordshire bull terrier is a rare breed in Canada. There are 932 registered Staffordshire bull terriers in Canada, of which 660 reside in Ontario. With an estimated 1.5 million dogs in Ontario, they don't even register on the radar.

"Staffordshire" is a very confusing name when used to distinguish between dogs. The Staffordshire bull terrier is not a Staffordshire terrier, it is not an American Staffordshire terrier and it is definitely not an American pit bull terrier. Just because dogs have "Staffordshire" in their name does not make them related or similar, any

more than it makes a German shepherd related to a German shorthaired pointer. Both names include a reference to location, not character.

The Ontario Legislature must make its own informed decision on what is a pit bull. It is certainly not good enough to say Winnipeg or Windsor or Kitchener defined the pit bull a certain way. Lack of familiarity and knowledge are the only reasons for the inclusion of the Staffordshire bull terrier in Bill 132. It is simply not based on fact.

So let's look at the facts. For that I've created a top 10 list of reasons to exclude the Staffordshire bull terrier from Bill 132:

(1) The Staffordshire bull terrier is the most popular terrier in the English-speaking world outside of North America. There are an estimated 250,000 Staffordshire bull terriers in the United Kingdom. The breed is also the number one terrier in Australia, New Zealand and South Africa. It would be hard to believe that all those people worldwide could be so wrong about a breed. It is only here in North America that they are the best-kept secret in the dog world.

(2) There has never been a documented unprovoked bite in Canada by a CKC-registered purebred Staffordshire bull terrier. The best indicator of future behaviour is past behaviour. The purebred Staffordshire bull terrier has a zero unprovoked bite record in Canada. You don't get any better than that.

(3) The Staffordshire bull terrier is known around the world as the "nanny dog" for its love of children. I've included photos for you of our beloved nanny dogs at work.

(4) The Staffordshire bull terrier is one of only two breeds recognized by the CKC in its breed standards to be good with children, and that's out of 164 breeds. Staffordshire bull terriers are absolutely required to be good with children to meet the standard of the breed. In the United Kingdom, this breed's country of origin, it is the only breed to have the words "totally reliable" in its breed standard.

(5) A study by Southampton University in the United Kingdom concluded that the Staffordshire bull terrier is one of the top 10 dogs to have in your home if you have children, and is the number one terrier with children. The study looked at over 162 breeds and described the Staffordshire bull terrier as happy, outgoing and with a wicked sense of humour. They went on to say that Staffies really do represent a bomb-proof dog with kids.

(6) The Staffordshire bull terrier is not a pit bull. The Staffordshire bull terrier is recognized by the Canadian Kennel Club as a distinct and separate breed. The Canadian Kennel Club is the only organization legally empowered in Canada to recognize purebred dogs. The CKC has repeatedly gone on record to state that the Staffordshire bull terrier is its own distinct breed and not part of any umbrella group.

(7) At 14 inches tall and 30 pounds, the Staffordshire bull terrier is not a physical threat to anyone. Size does matter. If you'll refer to the photos I've provided, there is

my full-grown CKC-registered Staffordshire bull terrier in a milk crate—this crate—13 inches by 13 inches, and she fits comfortably in here. I'm capable of carrying her under one arm, football style. But I've got to tell you, she prefers to be up here, baby style.

(8) A recent BBC news headline proclaimed, "'Soft' Staffies Sent to Dog Home." Last week, the BBC reported that one of the largest dog rescue organizations in the UK is "having to cope with an influx of Staffordshire bull terriers after some owners dumped them for not being tough enough." The home's spokeswoman went on to say, "Your biggest risk with a Staffie is getting licked to death." I own Becky, the kissing dog.

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(9) The German government recognizes that it may have acted too hastily in including the Staffordshire bull terrier in its pit bull ban, and the breed lists are now being overturned in Supreme Court.

(10) Italy has now restricted 92 breeds. The Staffordshire bull terrier is not one of them. Italy has restricted Dobermans, bull mastiffs and German shepherds. For good measure they even restrict St. Bernards, collies and corgis, and yes, they restrict pit bulls, but they have not restricted Staffordshire bull terriers—92 breeds restricted, and Italy recognizes that the nanny dog is a distinct and separate breed.

In conclusion, I'm asking the committee to exclude the Staffordshire bull terrier from Bill 132. Please do not punish 660 responsible Ontario dog owners and their children who have made the informed choice to have the Staffordshire bull terrier in their homes. Please do not deny future generations of Ontario families the love and devotion of a nanny dog.

Thank you for the opportunity to speak before you today. I'd like to take questions.

The Chair: Thank you very much. We have time for about one minute per party. Mr. Zimmer.

Mr. Zimmer: Can you just comment on the difference between a Staffordshire bull terrier and the American Staffordshire terrier?

Ms. Pyke: The Staffordshire bull terrier is an entirely British breed. It dates back almost 200 years to the bull-dog and terrier. It has been purebred in Britain for 70 years. The American Staffordshire terrier was entirely developed in the U.S.; that's why they've been named the American Staffordshire terrier. The breeds are separate and distinct. I provided you with an article that provides the full history, but basically, even though the dogs were related 200 years ago, you need to understand, that's 70 generations in dog time, and I don't think any of us are related to 70 human generations ago.

The Chair: One certainly hopes not. Mr. Miller.

Mr. Miller: Thank you, Maureen, for coming and making your presentation today. We did have another presenter say that the biggest danger of a Staffordshire bull terrier is being licked to death.

You've presented a lot of very useful factual information, but I wonder if you could talk a bit about what Bill 132 means to you personally.

Ms. Pyke: Bill 132 personally punishes me. I have always said, from the time I first had a Staffie in my life, "I will always have a Staffie in my life." Bill 132 will take that away from me. I am a responsible owner. My dogs are spayed, because I'm not a breeder. My dogs are leashed for their own protection when off their own property, and that's protection from cars and other unleashed dogs, yet Bill 132 is punishing me for making an informed decision, a researched decision, to have a wonderful dog with a wonderful safety record that's good with children. When I'm forced in five years, when one of my dogs passes, to choose another breed, a breed that isn't going to have the wonderful safety record my dog has, that may not be as good with children, that is punishment to me.

The Chair: Mr. Kormos.

Mr. Kormos: Predictably, this probably won't be a question, but many years ago I used to be a lawyer. I practised criminal defence. I can recall being with, more often than not, kids who had been convicted of something and the judge would look at their pre-sentence report and say, "This is an atrocious pre-sentence report. Your father was an alcoholic. You've misbehaved since you were four," and I would say, "Judge, exactly the point. If he had a good background, he'd have far less reason to be in this court."

So what I'm thinking, because we don't know a whole lot about these pit bulls—clearly, dangerous pit bulls are dangerous pit bulls, and the ones we hear about are the dangerous ones, the ones that—

Ms. Pyke: But they are not the majority.

Mr. Kormos: Exactly. What we're hearing about are the pit bulls that do attack people. You speak well for Staffordshire terriers—

Ms. Pyke: I have the perfect—

Mr. Kormos: Hold on. How do we get a handle? You speak well on behalf of Staffordshire terriers. A pit bull being not a breed but just a category—look, if somebody can persuade me that 99.9% of pit bulls are prima facie dangerous, then I'd have to take another look. I think everybody would.

Ms. Pyke: And I would agree.

Mr. Kormos: So how do we approach that?

Ms. Pyke: I absolutely agree, because I believe in dangerous-dog legislation. I think all breeds should be punished equally.

Mr. Kormos: Whether they're pit bulls or not.

Ms. Pyke: Absolutely. The answer to your question is in the Courtney Trempe inquest recommendations. That inquest recommended the implementation of a bite registry in Ontario. That has not happened. It's atrocious that it has not happened. Any law that is introduced needs to be based on facts and stats. We do not have relevant Ontario statistics. We must have them to make an informed decision.

The Chair: On that succinct point, thank you very much for having come in today.

Ms. Pyke: I appreciate your time.

BRUCE TURNBULL

The Chair: Is Bruce Turnbull in the room? Welcome.

Mr. Bruce Turnbull: Thank you. My name is Bruce Turnbull. I run an obedience school and do behavioural consults for a number of the veterinary clinics in my area which are in Elmvale, Midland, Wasaga Beach and Stayner. I actually service a fairly wide area.

I had a great deal of difficulty coming up with what I was going to speak about today because I must admit that this legislation has me quite irate. The extensive media coverage that has precipitated this bill—we really do need to try to put this into perspective. Media coverage on the pit bull attacks and the various dog breed attacks understandably has generated a high level of outrage, fear and to some extent even hysteria. Jill Jones, a lecturer in law in New Zealand, has adopted the term “moral panic” to describe this type of media-inspired climate. The problem with such high-profile media coverage is that it frequently generates a distorted view of reality. Ms. Jones further notes that proposed legislation that is based upon distorted reality will inevitably produce distorted law. She further writes that the problem with moral-panic-inspired legislation is that it not only lacks a rational basis but also tramples on basic constitutional principles and perverts the law of evidence in the process. To my mind, this bill fits her bill.

I would respectfully submit that, for example, the one clause where the onus of proving a dog is not a pit bull will be placed on an owner, in the absence of any viable scientific test or scientific measure, seems to me to be rather ludicrous. I have dealt with a number of dogs and many, many crossbreeds, and a great number of them are not pit bulls or pit bull crosses but exhibit a number of the same physical traits. I have had a number of boxer/Labrador retriever crosses, for example, heavy in chest and what have you, but sweet puppies.

At any rate, I think one of the saddest things about the emphasis that has been placed on pit bulls is that it has distracted us from some real issues we should be addressing: those of responsible dog ownership—although that seems to be getting quite a bit of fair play today—problems of dog aggression generally, across all breeds, and our need to reduce the incidence of bites, but again across all breeds.

In presenting and announcing this legislation, there was so-called evidence presented or a number of statements made in support of this legislation; a lot of rhetoric in terms of things like “Pit bulls are ticking time bombs.” The frequent repetition of such refrains has, to our shame, convinced some sectors of the population that these breeds, as a population, are unstable and pose an inordinate risk to the population at large. However, the frequent repetition of these refrains does not make them true. These assertions run counter to our current understanding of genetics, animal behaviour, psychology and physiology. They run counter to my personal experience and, as far as I can tell, the personal experience of many other trainers.

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In the 14 years that I've been dealing with dogs on a more or less professional basis, and that includes dealing with many, many dogs with aggression problems, I cannot think of a single incident in which I felt threatened by a pit bull. By and large, they have been extremely stable—certainly, there were a number of them that were very rambunctious. I cannot say the same for a number of other breeds and other dogs that I've had to deal with. By far, the most aggressive dogs that I've had to deal with were anything but pit bulls: again, huskies, husky crosses, German shepherds, shepherd crosses and the like.

It has also been claimed that breed-ban legislation elsewhere has been effective, but has it? In England, which has been mentioned as a model piece of legislation, I hadn't realized that the bill had been rescinded. My understanding was, in fact, that portions had been rescinded but that parts of the law were still in force. However, at last report, there were some indications that things had settled down, but this was largely because the law was not being enforced as vigorously. Indeed, this seems to be a general trend.

In the U.S., many jurisdictions have moved to repeal their breed-specific bans, citing problems with enforcement and escalating costs as the reasons.

In other jurisdictions, people working on the front lines have simply stopped enforcing the laws and have returned to dealing with dog problems on a case-by-case basis, regardless of the breed.

If this bill is enacted, I suspect that we will ultimately be faced with having to make one of three decisions: repeal this law; ignore it and return to the status quo; or follow suit, much as they have in Italy, and just continue to add breed after breed as the bite statistics change.

There are some endeavours that seem to have been quite successful. My understanding is that Calgary has orchestrated a more significant drop in dog-bite incidents than Winnipeg without having to impose any breed-specific legislation.

Another example is that of the community of Dorchester in Boston, which in 1996, in response to increasing problems with vicious dogs—many of which were being deliberately used to intimidate local residents—established a combined task force called Operation Dog Tag, which consists of members of the Boston police force, animal control in the city of Boston and various animal welfare organizations. When conducting an operation, the task force breaks down into teams, each consisting of a uniformed police officer, an animal control officer and a member from one or more of the welfare agencies. This includes members or people who work with the Massachusetts SPCA. What is noteworthy is that all the teams are also supplied with educational material for distribution to all animal owners they encounter.

The Chair: Just to inform you, you have about two minutes left.

Mr. Turnbull: Thank you. Their mandate is not simply enforcing but also educating. As it has expanded,

the task force now also does proactive work on the prevention of child and domestic abuse, given the correlations between those. According to the information that I received, there was a reported 95% decrease in animal complaints within one year of implementing the task force.

My main concern is with some of the other clauses that don't have to do with pit bulls; I probably should have addressed them, but I'm obviously not going to have time.

I think the one problem we have is that there are too few definitions—for example, what constitutes menacing behaviour? My greatest fear is that dogs show a lot of menacing behaviour or behaviour that can be interpreted as such, and without a clear definition or understanding of dog behaviour, much of which is ritualized or ritualized aggression, we stand the chance of persecuting a lot of dog owners and euthanizing a lot of undeserving dogs.

I think the main thing we do have to understand is that aggression is an instinct; it is within us all. For example, I heard a child psychologist state that there's no animal more aggressive than a two-year-old human; I might add to that a six-week-old puppy. What happens is that those behaviours become ritualized. They become redirected, they become altered in their form.

The Chair: Mr. Turnbull, this concludes the time allotted for you, and I want to thank you very much for having come in for your presentation today.

Mr. Turnbull: I will add that, unfortunately, I do not have a good copy for you, but that will be submitted subsequently.

The Chair: You can easily e-mail it to the clerk, who will distribute it to all of the members of the committee, if you choose to do so at a later time.

Mr. Turnbull: I think my main point is that we should make sure that the law is compatible with normal dog behaviour and normal human behaviour.

RONALD JEROY

The Chair: Is Mr. Ronald Jeroy in the room? Welcome.

Mr. Ronald Jeroy: Thank you, and I'd like to thank the committee for having me today. My name is Ron Jeroy and I'm a resident of Barrie. I'm 59, and I've been in the fire service for 31 years. I'm an avid fisherman, hunter and outdoorsman. I certainly know the value of good dogs and top performance and personality. I have raised dogs to the point where they won Purina Top Dog in Canada and several have their Canadian and American field trial championships, designated by the Canadian and American Kennel Clubs.

I presently own a litter-registered English springer spaniel. I had her spayed at six weeks old, and she is being trained to flush game and retrieve birds, both on land and in the water.

Yes, I am a gun owner, and I registered my firearms before the deadline of January 1, 1999. Although I wasn't

in favour of the registration, the federal government was trying to solve the problem of irresponsible gun owners and it was the least I could do.

Like most dog owners in Barrie, I enjoy walking along the waterfront, where we meet seniors, young families, joggers, fishermen, boat owners, couples and children and, of course, other people with their dogs, who keep them leashed and observe the stoop-and-scoop bylaw. But, of course, we also run into people who do not leash or control their dogs and, when told about the bylaw for leashing, seem indignant and arrogant about the concerns of others. Their pets are aggressive toward other dogs and people. Why would these people not take minor precautions—leashing—against their dogs' natural instincts and aggressive behaviour to dominate another dog?

Sooner or later a problem will happen and it will be at the expense of a small dog or, even worse, a child, before these types of people realize that they are responsible for their dogs. We seem to forget that all dogs are descended from wolves and are pack animals who look at the world differently than people. You are either a member of their pack or a stranger who should be driven off.

I am here and I feel that I am a responsible dog owner and I'll be commenting on Bill 132. Yes, the bill certainly raises a lot of concerns among many dog owners, breeders and organizations that care for dogs. I have followed these concerns in the newspaper and on TV and discussed the issue with people for and against this legislation.

Every person feels pain and anguish for the parents of children and dog owners whose child or pet has been mauled, bitten and even killed by an out-of-control dog. These frightening experiences certainly have affected them physically, mentally and financially, and they are justified for calling for some type of protection from the province.

Bill 132 legislation: To my understanding, there has been an alarming increase in the attacks of dogs on people and their pets, especially by the fighting and guard dog breeds. The ancestors of pit bulls, Staffordshire and American Staffordshire terriers, were bred for fighting, a sport outlawed in most modern countries, but law enforcement officials are still finding these illegal sporting events in North America. How are these operations getting their dogs?

Most descriptions of the above breeds in the Canadian and American Kennel Clubs make special note of the muscular bodies, extremely strong jaws and aggressive nature as a standard of these breeds. Presently there is a disproportionate number of vicious bites caused by these breeds.

Have these breeders kept their animals in the hands of responsible owners? The answer to the question, unfortunately, is no. Have the responsible owners been muzzling and leashing their animals in public? Have they developed an educational program for their customers and new owners of the breed? Again, no.

Who bears the responsibility that comes with ownership of a dog that has the potential to maul, maim and

even kill a person or domestic animal? Police departments are finding these dogs in ever-increasing numbers in chop shops, drug-growing operations and other illegal operations. They are fearless guard dogs capable of inflicting massive bites and are a real danger to police officers who are trying to uphold the law.

1550

The government of Ontario is taking a proactive approach to the problem.

Subsection 1(2) of Bill 132: The bill clearly describes the breeds of dogs that this legislation pertains to and even covers the crossbreeds by stating: "(e) a member of a class of dogs that have an appearance and physical characteristics that are substantially similar to dogs referred to in any of clauses (a) to (d); ('pit-bull')."

There are several ads in the Toronto Star advertising pit bulls for sale. The Canadian Kennel Club does not recognize a pit bull breed per se. Therefore, this legislation clearly covers these dogs and the Staffordshire terrier and American Staffordshire terrier. Most people in Canada know the physical appearance of a pit bull, and this legislation covers it properly.

Subsection 1(3) amends to cover civil liability, which then makes the act relate to the ordinary citizen or dog owner.

Subsections 1(4), (5), (6) and (7) describe the proceedings against a dog owner and give a very clear description of the offences covered in (a) to (c). I must identify the second: "(ii) behaving in a manner that poses a menace to the safety of persons or domestic animals." This clearly applies to all breeds of dogs and clearly covers a number of situations where people and animals are in danger.

Subsection (10) gives the court power to order other restrictions, such as signs, muzzles, leashes, etc.

The other sections of Bill 132 allow the owners of pit bulls and Staffordshire and American Staffordshire terriers to keep their present pets. But ownership requires responsibility. To ensure that these breeds are not bred any longer, there are strict sterilization and ownership requirements, banning importation and covering the enforcement section of the legislation. This ensures that people who own these dogs are responsible. This legislation gives a judge the power to enforce imprisonment and a fine of \$10,000, certainly a discouragement to flaunt the act.

Identification of pit bull: This section makes the onus of proving that the dog is not a pit bull lie on the owner of the dog. This again covers the people who, for some unknown reason, want to test the system.

My summary is that it's too bad that a small minority of owners of dogs causes the problems that every person in Ontario has to live with. Bill 132 clearly puts the onus on the owners to be responsible. To the breeders of these animals, I feel that you are part of the problem by not effectively ensuring responsible ownership of your breed and promoting leashing and muzzling of your animals. To the organizations who say their facilities are overtaxed with these animals from people who are not willing

to take responsibility, who else is better suited to care for these animals?

I must applaud the government's due diligence in proposing this sweeping legislation to protect both the citizens and dog owners of Ontario. I would be more than happy to take questions.

The Chair: Thank you very much. We'll have time for one brief question.

Mr. Miller: You were saying that you own a dog yourself.

Mr. Jeroy: That's correct.

Mr. Miller: And you went through the onus of proof part of the bill, which is section 19. Basically, the onus of proof in this bill means that you're guilty until proven innocent. If I come along and say, "I don't really know dogs that well, but I think your dog looks like a pit-bull-type dog," how are you going to prove that it isn't a pit bull?

Mr. Jeroy: Simply. As I stated, my dog is litter registered. It's litter registered as an English springer spaniel, and I would show it to you, the registration and the number.

Mr. Miller: OK. In my hypothetical situation, if it weren't a litter-registered dog—it was a mongrel—how are you going to prove that it's not a pit bull?

Mr. Jeroy: That it's not a pit bull?

Mr. Miller: Yes.

Mr. Jeroy: Realistically, I would go on the Web, and you'll get a copy from both the CKC and the AKC of the descriptions of these types of dogs, which basically gives you how much they weigh, the colorations, their bodies and all those different sizes. If my dog fell into that description, then—

Mr. Miller: We've heard that a Staffordshire bull terrier is 14 inches tall, and we've heard that an American Staffordshire terrier is a lot bigger. There is quite a variance—

Mr. Jeroy: Not really.

Mr. Miller: —and it covers a lot of dogs. I don't think you're going to be able to prove it.

Mr. Jeroy: Yes, there is, because if a judge judges the dog on its looks and body, he does not call a bulldog a retrieving type of dog. These people know their business and the breeds of dogs.

The Chair: Thank you for coming in today.

KIM LEBLANC

The Chair: Is Kim Leblanc in the room? Welcome to the committee this afternoon.

Ms. Kim Leblanc: Good afternoon. Thank you for hearing what I have to say, as long as everybody's still awake. I've been here as long as you guys have, so hopefully we can all manage this.

The Chair: We can all take it, if you can. Please start by stating your name for Hansard.

Ms. Leblanc: My name is Kim Leblanc and I'm a resident of Oro-Medonte. Good afternoon and thank you for the privilege of addressing the committee on an issue that is close to my heart. I'm a lifetime dog owner and

student of dogs, a graduate of Dogs, A Hobby or a Profession, and a long-time breeder, exhibitor and judge of purebred dogs. I am the Canadian Kennel Club director for Ontario north, which includes the city of Barrie.

I was a competitive sled dog driver for many years. My husband, Tom, and I organized the Copeland Forest Sled Dog Races, which had the largest entry in the province. It's interesting to note that at our races, there were over 90 teams, which involved in excess of 500 dogs, some of them crossbred. These dogs, along with their owners, spouses, children, spectators and all the accompanying vehicles and equipment, were confined to the parking lot till race time. They were just as excited as at any other race or sporting event. Yes, it was crowded. Yes, it was noisy. No, we did not have any canine-to-human aggression problems nor canine-to-canine ones, despite all the excitement, barking and carrying on, though I must admit there were on occasion a few human-to-human issues, but none of any gravity. The reason there were no incidents of aggression is that these dogs were properly socialized and trained. They were performance athletes. Training forms the basis of good behaviour in both canines and humans.

Good legislation is based on research and input from experts in that area of expertise. The proposed Bill 132 seems to lack both. The statistics do not appear to back up the approach taken by the draft legislation, and I can find no supporting list of experts on which the proposed legislation is based.

Some of the headline experts in this field, the Ontario Veterinary Medical Association, the Canada Safety Council, the Canadian Kennel Club, the Ontario Society for the Prevention of Cruelty to Animals, the Association of Animal Shelter Administrators of Ontario, the many dog trainers, psychologists and behaviourists have attempted to be heard prior to these hearings, but their message seems to have fallen on deaf ears. Is that because the experts were not in agreement with this proposed legislation?

The Canadian Hospitals Injury Reporting and Prevention Program studied 278 dog attacks that required hospital attention. The results: over 88 different types of dogs were involved.

Even if the draft legislation is passed, alleged "pit bull" bites represent only 20% of all bites. Will the public be safe from the other 80%? You will have heard from many experts that the pit bull is a shape or type of dog, not a definite breed. It's a myth. Those of us who understand breeding and heredity know that when genes are mixed, as is in the case of any mongrel, including the pit bull, the resultant puppies may or may not resemble the parents.

Therefore, breed identification will become a huge challenge. The Canadian Kennel Club is the only organization in Canada legally enabled under the Animal Pedigree Act to identify the 165 CKC-recognized breeds and 350 different international breeds, which include the Staffordshire terrier and the American Staffordshire terrier.

May I share a unique experience that will highlight this problem? Several years ago while visiting friends in Cleveland, Ohio, I was asked to evaluate their neighbour's Doberman pinscher. They wanted to know if the dog was worthy of a championship. I was delighted to help; I was the big expert. The dog was presented to me for inspection. He stood before me, clearly a reasonable specimen. Nice coat. Good markings. His ears and tail well-cropped. His tan markings seemed a little too dark for my taste but this was not of sufficient note to challenge his quality. I declared him a pretty good example of the breed.

Chuckling at my pronouncement, my friends proceeded to tell me the dog was half Irish setter. I was stunned. I looked at them expecting them to say that the Doberman was the mother, and it was not. The Irish setter was the mother. So it was pretty clear that, even with all my training as an expert, I couldn't distinguish this Doberman from a mutt, and he was a mutt. The Irish setter characteristics did not display themselves. So how can we expect our local dog catchers to make these assessments?

1600

Who will identify these dogs? Animal shelter staff and veterinary clinic staff need a description to keep their records, but they have no mandate to correctly identify these dogs. Staff turnover can be frequent and many of the caretakers are volunteers. Misidentification will be rampant. Dogs tend to be grouped in families, so it would follow that most dogs with a short, smooth coat weighing between 25 and 60 pounds and muscular will be identified as the mythical pit bull when they are clearly just a plain old-fashioned Heinz 57. For those of you who are a little younger than I am, that's a mutt.

Science has so far failed to come up with a technique using DNA to identify a dog as a specific breed. How does the government think they will apply the legislation to dogs of mixed heritage? Who will fund the necessary research so that the government can enforce this draft Bill 132? What will the government do to battle a legal challenge to this proposed bill, a bill that will be based on the opinions of public servants that could easily be refuted by lack of scientific evidence?

By targeting the mythical pit bull, the proposed legislation is condemning a shape of dog. Bill 132 in its draft form erroneously lumps purebred dogs in with the dangerous rogue dog we all decry. If the draft bill is accepted as written, you will be responsible for eradicating two benign and sweet-tempered CKC purebred breeds.

Do you know someone who's deaf, has severe epilepsy or is blind? Various service dogs have enriched many of these people's lives. Some of them are crossbreeds. What if the dog of choice for a disabled person resembles the pit bull type? Will you deny the disabled the right to a full lifestyle? We already have trained search-and-rescue dogs of this physical style in use. Will you now not allow them to do their job and save lives?

Purebred dogs are identifiable and traceable via their tattoo or microchip identification through our very own Canadian Kennel Club. The CKC and the local kennel clubs provide opportunities to the local communities for education, training and expert advice. Dog experts such as long-time breeders, trainers and judges are available to assist with the identification and evaluation of problem dogs. So far, I have not talked to any here in Ontario that has been consulted on this bill.

Dangerous-dog legislation and education are the keys to success in preventing the continued upward spiral of dog attacks. In light of the recent attack on a hockey coach by an irate father, did we see all hockey dads banned from the hockey rink? No, sir, but junior hockey associations across Canada have been diligently working with coaches, trainers and parents to educate everyone.

Legislators need to get on this bandwagon. Ask the Canadian Kennel Club, ask the local kennel clubs, ask the dog professionals to assist in the provision of public education. We are here and available, and a lot of us already do volunteer work. Provide incentives such as reduced licensing fees for basic obedience and further incentives for those who are willing to participate in educational programs. Responsible dog ownership is a viable solution.

Breed bans historically don't work. Over the course of these hearings, you will hear the evidence. Of course, if there are significantly less numbers of a banned breed, it follows that there will be a correlation in the decrease in bites by that breed.

The registry on guns incorrectly presumed there would be fewer murders on our streets. But the people who own illegal guns are the same anti-social, lawless individuals who strut with intimidating rogue dogs, the dogs we call mythical pit bulls. The irresponsible human, those who encourage aggression in dogs, should be the focus of this legislation.

Another little piece I would like to share with you was passed along to me. In Ontario right now in Simcoe county, it's public speaking for the kids. The speech enclosed is Abby's speech. She's a grade 8 student in the area, and she has a story to tell:

—OK, you're walking your dog. Everything's just fine. You're listening to your Walkman. You look down at your boxer, Daisy. She's so cute. She would never hurt a fly. So you find it weird that when a mother and her child walk by, they stay as far away as possible. But oh well. Who cares, right? You keep walking. All of a sudden a big black van pulls up on the sidewalk in front of you. "BSLP" is written across the side. The speaker-phone on the top of the vehicle screams at you, "We are the breed-specific-legislation police! Put down the leash and walk away. Your dog is a pit bull, vicious and harmful." "But Daisy is a boxer." "Maybe so," they scream, "but she looks like a pit bull."

—All right, so that's kind of a dramatized situation. But just from that, you can see that the BSL is a very broad restriction. They say that pit bulls are banned, but what is a pit bull? There's no actual breed called a pit

bull. So what do the authorities classify as a pit bull? Basically, anything that resembles a mutt-looking large dog. So it's boxers, Staffies, AmStaffs; the list goes on.

—What is BSL and what does it mean for you and me? The BSL is a restriction of certain breeds. The authorities designate certain breeds. So say Daisy would never hurt a fly, but, on the whole, her breed would. She's a victim. It's like guilt by association, except she was born into it.

—Think about this for a second. There are approximately five million dogs in Canada. Out of those five million, there's one fatal bite a year. Out of these bites, none of them that have been from a pit bull is proved to be unprovoked. So yes, maybe one bad bite a year; if it's from a pit bull, the person that got bitten provoked the dog.

She has quite a bit more to say. She feels very distraught that, as a person, she will be restricted from choosing what kind of dog she would like to have. I don't know this child. This was just sent to me from one of the local teachers.

The Chair: Thank you very much for your time today and for your very thoughtful brief. One hopes we never see the spectre of a hockey pit bull in Canada.

MONICA JOHNNY

The Chair: Is Monica Johnny in the room? Welcome. I think you've been here long enough to figure out the rules.

Ms. Monica Johnny: I think so.

The Chair: Please start by stating your name for Hansard, and proceed as you wish.

Ms. Johnny: Good afternoon, ladies and gentlemen of the standing committee. I'd like to thank you for giving me the opportunity to present before you today.

My name is Monica Johnny. I am not a pit bull owner. I am a dog trainer and obedience instructor. I've made my living working with dogs since 1980. I've spent 15 years working in a veterinary hospital as a groomer, trainer and behaviour consultant. I compete in flyball, a dog sport, and I'm also a North American Flyball Association judge.

I do not support Bill 132. I encourage the implementation of a dangerous-dog act that would cover all breeds of dogs and that would respect and acknowledge potential bite victims of pit bulls as well as non-pit-bulls. All dogs are capable of biting. All dogs are capable of an aggressive attack, either on another animal or a human.

I'm quite concerned with many aspects of Bill 132, and I'm going to touch on just a couple of them. Breed identification is one.

There are many square-headed breeds that could easily be mistaken for a pit bull. The onus in this bill is on the owner to prove that their dog is not one. That may be easy for those fortunate enough to have registration papers for their dogs, but many people are not in ownership of purebred dogs with papers. There are many breeds of dogs that resemble the pit bull but are not pit

bulls. If you breed a Labrador and a boxer together, that often looks like a pit bull. How will someone who owns that type of dog be able to prove the dog's heritage? Mixed breeds that have no common ancestry with the pit bull terrier but share similar breed traits could easily be misidentified, and have been.

There are already three breeds listed in this bill. There are endless possibilities as to what these dogs and their crossbred offspring can look like. Identification will prove to be quite difficult.

People have been maimed and killed by breeds of dogs other than the pit bull. This bill would have done nothing to protect those people had it already been in place. Dangerous-dog legislation, as proposed by several of the speakers here, needs to be implemented. Stiff and enforced fines as well as jail terms should be handed out to owners of dangerous dogs. People who continually let their dogs run at large should not be allowed to own dogs.

Legislation needs to discourage people from owning aggressive dogs. Stiff fines and jail terms would make owners think more seriously about housing a potentially dangerous animal.

In society today, many seem to have the impression that a dog is just a little human—dog trainers call that the Disney syndrome. People put human emotions and characteristics on dogs that they do not possess. Dogs are dogs and act like dogs, and we need to know that.

People need to be educated on the proper socializing of puppies. They need to teach the dog to behave in society. Dogs are not Walt Disney characters. They are not automatically perfect companions. They do not speak human, nor do they come pre-trained at eight weeks of age. There is much socializing and training that goes into a responsible canine citizen.

Rather than ban the pit bull types, legislate the owners to train them if they want to house them. Make licensing more expensive for these breeds, and then reduce those licence fees and remove the muzzle clause for dogs that have taken obedience classes or that pass a Canine Good Citizen test.

1610

As an obedience instructor, I have many concerns about the use of muzzles on dogs, and I'd really like to address that issue today. A muzzled dog cannot properly socialize with strangers or other animals. Bite inhibition is a learned behaviour. They need to play-bite and explore with their mouths in order to learn to be gentle. A muzzled dog cannot learn bite inhibition. A dog with little or no bite inhibition is far more dangerous to the public than one properly raised and socialized. Muzzling young dogs under 18 months of age is unnecessary as well as detrimental to their socialization.

A muzzled and leashed dog cannot play Frisbee or ball. Dogs need to have a safe outlet for burning energy. Muzzles sold in pet stores are often inadequate for proper breathing and drinking and are inhumane if left on for long periods of time.

A muzzled dog cannot train for most dog sports or any advanced level of obedience. A dog cannot compete in

competitions or shows, such as obedience trials, rally-O, conformation or flyball, while he is wearing a muzzle. The sport of agility is conducted without even a collar on the dog. This needs to be addressed in the bill.

The legislating of muzzles and leashes on any dogs will discourage owners from training their dogs and competing in dog sports. Why would the Ontario government want to discourage ongoing training when the experts on canine behaviour are in agreement that a trained dog is far less a threat to society than an untrained dog?

Prophylactic muzzling requirements completely miss the boat in terms of their purported goal of reducing dog bites. They only target dogs being walked by their owners in public, where very few bites actually occur. The vast majority of dog bites occur on private property, where muzzle orders are not in effect. Most dog bites occur with an unsupervised dog on the owner's property, usually left alone with an unsupervised child.

I recommend a clause that allows for Ontario pit bulls, as well as pit bull types coming into Ontario, to participate in dog training activities without the lead and muzzle in appropriate settings. This should include dog sport venues, dog training classes, dog clubs, off-leash dog parks, dog sport demonstrations and on the property of friends and family.

In the same way that some humans are more prone to losing their tempers, this too is the case with individual dogs—not individual dog breeds, but individual dogs of all breeds. To this end, we need education. Dog owners, breeders and trainers need to identify these individual animals and teach them to be less reactive and not put them in situations that are likely to adrenalize them.

Dogs found to be of an aggressive nature need to be retrained or euthanized. Owners need to stop making excuses for their untrained and unsocial dogs. Owners need to be taught to recognize a potentially dangerous dog. Heavy fines and possible jail terms will make dog owners think more seriously about their pet's behaviour and the implications of owning an aggressive animal in the province of Ontario.

There were 36 recommendations made in the 1998 inquest into the tragic death of Courtney Trempe, which could, if implemented, drastically reduce the number of dog bites and attacks, especially against our children.

The Chair: Just to let you know, you have about two minutes left.

Ms. Johnny: Thank you.

Many of these recommendations were regarding educating children and the public as to the behaviour of dogs.

The city of Calgary has implemented a non-breed-specific dangerous-dog bylaw. This bylaw makes owners responsible for their pet's behaviour. Calgary has reduced their dog bites by 70% since the introduction of this bylaw. I urge you to consider adopting a similar bill here in Ontario.

Legislation is needed, but banning individual breeds won't solve the dog bite problem. Educating people will.

I will answer questions if there's time.

The Chair: Thank you. We have time for just one brief question. Mr. Kormos isn't here. Mr. Zimmer?

Mr. Zimmer: This issue of bite inhibition—I gather a breed like a Labrador retriever is thought of as having bite inhibition.

Ms. Johnny: It may be thought of, but no breed of dog naturally has bite inhibition. They learn bite inhibition through biting other puppies. The puppies yelp, and they learn, "My mouth is too hard." They learn that by putting their mouth on people and their mouth is too hard.

Mr. Zimmer: Perhaps I'm wrong, but I thought that dogs like Labrador retrievers were bred for a soft bite.

Ms. Johnny: They're bred for carrying a bird with a soft bite. That's not related to biting something. That's a carrying action. It's a different thing.

Mr. Zimmer: But isn't that a part of the bite inhibition?

Ms. Johnny: No, it's not. They're bred to carry things with a soft bite.

Mr. Zimmer: What were pit bulls initially bred for?

Ms. Johnny: I'm not a pit bull expert but I believe pit bull terriers were originally bred for bull baiting.

Mr. Zimmer: What is bull baiting?

Ms. Johnny: It's a livestock thing. They use the dogs to control livestock.

The Chair: Thank you very much for having come in today and for giving us your deputation.

ROBIN SUMMERLEY

The Chair: Is Robin Summerley in the room? Robin, welcome.

Mr. Robin Summerley: Thank you very much for the opportunity to present to you. My name is Robin Summerley. I am a resident of Barrie. I'm the president of a firm specializing in computer software for animal hospitals. For the last 21 years, I've worked closely with veterinarians designing solutions for their data needs to run animal hospitals. My specialty is information. I am not a doctor. I can only tell you how trained animal experts classify their information.

There may be only three people in Ontario who can give you the kinds of numbers I'm about to show you. They are my son, who works with me, myself and one of my competitors who's based in this province. The other people who sell computer systems to veterinarians are Americans, and they don't come up here. They don't provide the on-site service that we do, so they don't know the data the way we do.

Background: I think you've already heard from some veterinarians. They deal with animals in stressful situations. They are frequently strangers to the animal, and they have to subject them to some indignities. When they're drawing blood samples or giving vaccinations, they have to puncture skin. This obviously produces pain no matter how skilful the professional is. If the animal is aggressive, it will respond by attacking under these stressful circumstances. If the doctor or staff are at risk,

they have to take precautions. Because of the numbers of animals they see, they cannot remember each one to know whether caution is required.

Our systems allow them, amongst many other things, to code these threats. They have to be coded, as opposed to being documented in plain English, because in many instances the owners are in a state of denial about the animal's behaviour. Should the client see English comments on the computer screen, the relationship between the doctor and the client can become very strained. Because the comments are coded, they are easy to extract and summarize once you know the codes.

During the course of a career, any one veterinarian might see between 20,000 and 30,000 animals, depending on the number of repeat visits they have from any one patient. I have created systems that cover well over a million records, and I have briefly examined some of them from the perspective of this legislation. The research has been done in an anonymous fashion to protect the privacy of both the clients and the doctors. The information can be extracted simply with reference to breed, so that all other identification data are protected.

If the committee is interested, I could access the databases for approximately 100 clinics. What I have done for today is to pick a typical clinic that is partially suburban and has some high-density urban areas and a rural component. It is representative of many of our clinics.

There were three questions on the issue of dog aggression that I analyzed with these data:

- (1) How many breeds are there?
- (2) How many aggressive animals are there in the total population?
- (3) What is the distribution of these aggressive animals into the various breed categories?

Just to let you know, the summary was done with the owning veterinarian's permission. All information has been stripped of any identification that might lead to a conflict with the federal privacy-of-information legislation.

The answers to the questions were instructive. The practice has been automated since 1987, so we have 18 years of data to work with. There are 21,958 individual records. Obviously, these include dogs, cats, rabbits, lizards etc., so we needed to zoom in and just look at the dog records. Of those 21,000, some 10,677 are dogs, 48.6% of the total records.

Looking just at those records, we produced the following numbers: First of all we said, "Breeds—how many are there?" The first cut came up with 2,075 different identifications. This is clearly wrong. Closer examination showed that, for example, there were seven different ways of spelling "German shepherd"; don't ask. Our educational process is not producing literate workers. Correcting for this type of error, with my limited knowledge of the dog world, it looked as though there were some 460 types you could identify. An expert in dog classification would probably bundle about 200 of these into a single category of "mutt"—in other words, a

crossbreed—leaving, plus or minus, some 250 identifiable breeds. In our new systems, we provide a table of 198 different dog breeds to use as a look-up, which individual clinics can modify. So we have several hundred breeds to deal with. From that, I think it's a fair observation that determining breeds is not an exact science in every case, and you've heard the same from other presenters in this case.

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The second observation is that unless an owner spends hundreds, and sometimes thousands, of dollars to acquire an animal from a recognized breeder, it is impossible to certify that a dog is a particular breed. Dogs that are given away or adopted from animal shelters have no papers. In these cases, the proposed legislative requirement that the owner prove his or her animal is not a pit bull is ludicrous.

The third observation from the classification issue of how many breeds there are is that if the legislation were to be passed as is, it would guarantee the death of any large dog put in a pound. This is because when stray animals are placed in the pound, they obviously do not have breed certificates available. They are just put up for adoption as is. After a certain time period, if they're not adopted, they're euthanized. No person in their right mind would go to a pound and take out an animal without paperwork, knowing that they might have to prove that this dog is not a pit bull. So the dog would simply be waiting out its appointed time in death row, regardless of its demeanour.

Dealing with the second question, how many aggressive animals there were, after looking at some 10,000 records we identified 316 flagged as being aggressive or very aggressive. This is about 2.96% of the total canine population. Recently, I read that something like 20% of United States males have criminal records. When you compare that with the 2.96%, you really have to favour the dogs.

The third question we looked at was, if we have these 316 aggressive cases, how do they slot into the breed categories? The total number of aggressive animals is so low that one has to be careful about assigning too high a statistical significance to the conclusions. With this question in mind, if in the complete database there were probably something like 250 to 350 distinct breeds, and I bow to the experts here as to what the exact number is, you can see that between 45% and 70% of the total breeds were represented in the aggressive subset. That's a significant number.

Looking at the aggressive subset, in no case did any one breed's numbers represent more than 5% of the total population of that breed in the clinic's database. Most were much lower. In the pit bull category as defined by the proposed legislation, the aggressive members represented about 1% of the total pit bull population. This distribution supports the premise, as stated by every veterinarian I have spoken to, that owners are the problem, not the breeds.

If the committee were interested, I know I could extend this database by a factor of 10 within a week. The

resulting information would stand up to any statistical test you care to use and would reinforce the conclusions that emerged from this preliminary study.

The Chair: For your information, you have about two minutes remaining.

Mr. Summerley: My conclusions are simple. You do need to pass legislation that protects the public from the unfortunate victims of bad upbringing. You should also make sure that the legislation does not simply move the target of these twisted minds to another breed, to be subjected to cruelty. We need to find ways to stop it at the source.

Our recommendations: The public obviously needs more protection than it presently has, but it's hard, as a non-legal expert, to work one's way through a thicket of legal jargon and make detailed clause-by-clause recommendations. If science means anything to government, then the references to specific breeds should be removed from the legislation and the owners of any aggressive animal should be targeted specifically.

Interestingly enough, farmers appear to be ahead of the public at large. I would like to draw the committee's attention to the Livestock, Poultry and Honey Bee Protection Act, RSO 1990, chapter L24. I believe this was revised as recently as 2003. Leaving the exact interpretation to lawyers, the livestock part of it seems to say that if a dog attacks livestock, the dog is to be euthanized right away, and the owner of the dog is responsible to the farmer for the economic value of the livestock destroyed.

This is an excellent model that has stood the test of time and is welcomed by the victims. Obviously, the economic value of a human life, whether terminated or crippled, is not as easily determined as a farm animal's. However, any dog owner faced with paying stiff penalties to the victim of their pets, and facing jail terms as well, would be forced to think twice about the way they handle their animals.

This legislation would pass the test of time. It is not opportunistic. It deals with a real problem in a comprehensive manner and it gets to the source of the problem.

I leave you with the thought that good legislation is a monument to its authors. Poor legislation is a millstone around society's neck. It foments scofflaws and threatens the entire democratic structure. Thank you very much.

The Chair: Thank you very much, Mr. Summerley. Unfortunately, you've used up your time, which is probably fortunate, because as a former software developer, I'd be dying to ask you questions about your table definitions. Thank you for having come in today.

ANIMAL HOSPITAL OF KITCHENER-WATERLOO

The Chair: Is a representative of the Animal Hospital of Kitchener-Waterloo in the room?

Welcome this afternoon. I think you've been in the room long enough to pick up the ground rules. You have 15 minutes to address us today. If you leave any time remaining, it will be divided among the parties for ques-

tions. Please begin by stating your name for Hansard, and proceed as you wish.

Dr. Gary Goerée: My name is Gary Goerée. I'm a veterinarian. I practise in Kitchener. I was on the dangerous-dog committee in Kitchener from 1995 to 1997 and the pit bull appeals designation committee in 1997 and from 2000 to 2002. I've also served on the ad hoc committee on animal issues for Kitchener.

The four pillars that justified the ban in Kitchener in 1997 were: there was an epidemic of pit bull attacks; pit bull brains were chemically different from other dogs; pit bulls had a jaw strength of 2,000 pounds per square inch; and they were the number one cause of human deaths caused by dog bites.

On that basis, Kitchener council passed a bylaw banning the breed in 1997. I received a letter in February 1997 saying that I had been assigned to the pit bull appeals designation committee. Being the only veterinarian on the committee, I decided to do some background research because I assumed that people would expect me to know what I was talking about.

I went to the Ministry of Health to obtain numbers in terms of how many pit bulls had actually attacked in Kitchener. No one had ever looked at those numbers before. For those of you who don't know, when a bite incident happens anywhere in Ontario, a piece of paper is generated. Any doctor, police officer or hospital must send that paper to the Ministry of Health. So I went through over 1,400 of these bite incident reports and came up with a table of the number of attacks that had occurred in 1995 and 1996 in Kitchener.

That table is on page 2 of the handout I gave you, and you can see that pit bulls were number 8 in the region of Waterloo, right behind poodles. The 17 and 18 pit bull incidents per year represent approximately three out of every 100 dog incidents that happened in the Kitchener area.

With regard to the pit bull brain story, it was alleged that pit bull brains were chemically different. It was said that the release of endorphins caused pit bulls to become almost addicted, since endorphins are morphine-like substances in their brains. When I researched this, I discovered that most of the pit bull brain stories came from newspaper articles which then cited other newspaper articles, which cited other newspaper articles. So I called a board-certified veterinary neurologist, Dr. Susan Cochrane, and I asked her what the story was on the endorphin thing and pit bulls attacking. She had no idea what I was talking about, but she said, "I've only been board certified for four years. Call Dr. Gary Landsberg, who was just certified as a veterinary behaviourist. He's right up to date on this." So I called Dr. Landsberg and he had not heard anything about the pit bull endorphin brain theory either, although he did tell me that there was a theory that compulsive tail-chasing in dogs could be endorphin, mediated.

1630

With regard to the jaw strength of pit bulls being approximately a ton, once again, I researched the stories

from newspapers, which always cited other newspapers. I discovered that there is not a single study that suggests that pit bulls actually do have a jaw strength of 2,000 pounds per square inch. I think that you could also try to envision how you would even do such a study or how you would try to measure the jaw strength of a biting pit bull. Two thousand pounds happens to be a perfect ton. My conclusion was that the jaw strength theory was another pit bull myth.

The fourth pillar justifying the ban in Kitchener was that it was the number one cause of dog-bite fatalities. There were no numbers in Canada at the time, so these numbers all had to come from the United States. It is true that pit bulls were the number one cause of human deaths in the United States for a certain time period. However, from 1975 to 1980, the number one dog was actually the German shepherd. In the late 1970s to mid-1980s, it was then the pit bull. Later on, the early 1990s, it became the Rottweiler.

The four pillars condemning pit bulls that served as evidence supporting the need for the 1997 Kitchener bylaw seemed to overwhelmingly justify the ban. However, after the bylaw was passed, three of those four pillars were discovered to be either inaccurate or fabricated. That left only dog-bite fatality statistics, which in fact showed a trend toward breeds other than the pit bull. There was not good evidence, therefore, in 1997 that pit bulls were any more dangerous than other breeds of dogs.

I brought this presentation to the editorial board of the Kitchener-Waterloo Record in 1997, and I asked them the question, "Since only three out of very 100 dog bites in this area are pit bulls, why do you only report pit bull attacks in your newspaper?" Their answer was, "Because pit bulls are news."

I brought this information to Kitchener council as well, remembering that this was after the bylaw was passed, and I warned them that if they made public statements regarding the four pillars of the pit bull attack theory, they may be corrected in public. The council thanked me for the information, said they wouldn't say those things again in public, and they kept their ban.

What the ban actually does in Kitchener is it bans a look or phenotype because, as you heard, you cannot definitively say what a pit bull or pit bull cross is. In other words, we are not condemning dogs that had shown themselves to be dangerous or had ever threatened a child; we condemned dogs that looked like or possibly might be a cross of a pit bull or Staffordshire. In other words, on the committee we sat there banning dogs with big heads and short hair. The humane society officer would come in with pictures. If the people could not prove that their dog was not a pit bull, we would then go in camera, outside where the owners couldn't see us, and we would sit there in a back room with these pictures: "The head looks big. Look at the tail. Oh, that hair's pretty short." Then, on that basis only, we would decide whether that dog was too dangerous to live in Kitchener. We would go back into the room, we would look at the owners and we would say, "Either kill your dog or move

out of town.” We said it in a much nicer way, but that is exactly what we did.

I think that it’s possible to do the wrong thing for the right reasons. Kitchener’s pit bull banning bylaw is not a success story about innovative legislation that made children safer; it’s an example of how bad homework can allow bad legislation to be passed.

Kitchener is an experiment that was a mistake because it was not based on fact. This is not a mistake that ought to be repeated province-wide.

Applause.

The Chair: I again remind the audience to please refrain from a show of support during the hearings.

Questions? We have about two minutes per party. Mr. Kormos.

Mr. Kormos: Thank you very much, Doctor. Look, we’ve heard today from people who were victimized, in their instances by what they understood to be pit bulls—and I understand increasingly that that’s hardly a precise term, but pit bulls or pit-bull-like dogs. We’ve heard some atrocious examples of pit-bull-like dogs—mind you, yesterday down where I come from in St. Catharines, a young woman was attacked by two Dutch shepherds, and in Ottawa, a four-year-old boy and a 16-year-old boy were attacked by mastiffs, neither of which is included in the legislation.

I hear your argument, and there are those who have argued the contrary position vis-à-vis pit bulls. Is there a flaw, is there a fundamental error from the point of view of protecting public safety in proceeding with this breed-specific ban? The reason I say that is, among other things, that in the case of the people we heard today who were victims, even with the Dog Owners’ Liability Act—and you’re familiar with that—nobody prosecuted, nobody took the bad dog owners to court so the court could determine the level of dangerousness and decide whether they should be put down or otherwise restricted. That was of great concern. We obviously have very scarce resources when it comes to enforcing statutes. So in the context that under the Dog Owners’ Liability Act these victims have not had the system attend to their needs, is there a flaw in this approach that impedes or impairs? Everybody has an interest here in improving and enhancing public safety. I’m not taking that away from the people who advocate banning pit bulls. They believe that; God bless. I haven’t been convinced; the evidence isn’t there from my point of view. But is there a flaw in that approach?

Dr. Goérée: The basic flaw is that there’s no more evidence that big-headed, short-haired dogs are dangerous than there is that people with coffee-coloured skin are all terrorists who want to blow up buildings. It just doesn’t work that way. The reason we banned pit bulls was because whenever you picked up a newspaper, there was another pit bull attack reported, when in fact the newspapers chose not to tell us about the 97% of attacks that happened. I know that when Mr. Bryant announced this law, he did a photo op with a lady whose child had been attacked by a pit bull. What he did not include in the

photo op was the many children whose faces have probably been torn by other breeds of dogs. That’s a fundamental flaw in the coverage of this type of thing. We will hear about every pit bull attack. Those pictures will be prominent on the front pages of our newspapers, but are buried on page 16 without even a mention of what breed it is when it is another breed.

The Chair: Mr Zimmer?

Mr. Zimmer: Page 2 of your presentation, the breakdown of the attacks, starts off with the German shepherd, through to 19, the chihuahua, but there’s nothing on the chart indicating the severity of the attack, is there?

Dr. Goérée: There are no statistics done in Kitchener—there were no statistics done in Kitchener and there have not been since—on the severity of any of these attacks, pit bulls included.

Mr. Zimmer: The ranking proceeds from 1 to 19; 7 is a poodle and 8 is a pit bull. My second question is, would you rather face an attack by a poodle or a pit bull?

Mr. Kormos: Standard or toy?

Dr. Goérée: Trained or not trained? Actually, the most severe bites I’ve received have been from a cocker spaniel cross and a Labrador cross, so I don’t think your question is fair. But I’ll tell you that I wouldn’t like to receive a bite from any dog.

1640

The Chair: Mr Miller?

Mr. Miller: Thank you for your excellent presentation. You’ve told us quite a bit about Kitchener and their activity in terms of banning pit bulls. Are you familiar at all with what the city of Calgary has done in terms of their bylaw?

Dr. Goérée: No, I’m not.

Mr. Miller: One of the other presenters handed out the actual bylaw to us as part of our material and pointed out that Calgary has reduced dog bites by 70% with a non-breed-specific bylaw. It does things like require much higher licensing. I think Toronto has something like 5% of dogs licensed. In Calgary they have 90% of dogs licensed and they have tighter leash laws. It’s actually quite comprehensive. Do you have any opinion on what sorts of rules would actually work toward reducing dog bites?

Dr. Goérée: This month, I presented to Kitchener council some suggestions in terms of how to toughen up the dangerous-dog aspects of Kitchener’s bylaws. So the answer to your question is, yes, I do have opinions about that. I think you underestimate the ability of a law that scares people if their dogs are going to bite people. If people know that their dog could be taken away from them, they will take precautions in terms of training. I think that’s why dangerous-dog legislation in itself, threatening people in case their dogs are in a situation, will actually work. That’s why I would believe that Calgary’s does work.

The other thing to point out is that since Kitchener passed this pit bull banning bylaw in 1997, we haven’t done anything in terms of strengthening our dangerous-dog bylaws; we didn’t need to because we got rid of the

pit bulls, so why should we worry about anything else? That is part of the problem with this as well. I think you fool people into believing that you've solved the problem when you ban pit bulls, when in fact you haven't solved a thing. The number of dog incidents in the region of Waterloo has not gone down since this bylaw was passed.

The Chair: Thank you very much for your interesting deputation this afternoon.

TRACY DINELEY

The Chair: Is Tracy Dineley in the room?

Welcome. You get the last word of the afternoon.

Ms. Tracy Dineley: That's a hard one to follow.

The Chair: I'm sure you're up to it. You have 10 minutes. If you have any time remaining, it will be divided among the parties for questions. Please begin by stating your name for Hansard.

Ms. Dineley: My name is Tracy Dineley. First, let me thank you for allowing me to come and speak today on this important issue. I have been making my living in dogs for the past 25 years. I am a dog groomer and an all-breed professional dog show handler. At any one time, I have a client list of over 1,000 dogs. I have also been breeding Staffordshire bull terriers, also known worldwide as the nanny dog, since 1984.

I congratulate you on taking steps to ensure the safety of people from dangerous dogs. I think we desperately need a good dangerous-dog law. You have heard from many people in these hearings that breed-specific legislation, which I will refer to as BSL from here on, does not work, and I agree. The statistics from all the places where BSL is in place show this fact. Winnipeg alone showed a dramatic increase in bites from other breeds the year after BSL was in place.

You have to put the onus where it belongs, on the people, the owners, not the breeds. We need to make people accountable for their dogs' actions. They are responsible for their dogs in whole. It is the owners' job to keep their dogs safe, and people safe from their dogs.

It never ceases to amaze me as a groomer how many pet owners I talk to on a daily basis who allow their dogs to hold them hostage in their own homes. These are not educated dog people. These are people who allow their dogs to rule the roost. I am not just talking about large breeds; I'm talking about all breeds, shapes and sizes. These dogs bite their owners; they bite guests who come into their homes; they bite their veterinarians and the groomers who work with them. This is mostly due to the lack of education on the part of the owner to properly raise and train them to be good and safe canine citizens. This is not to say that they are all bad. Most dogs of any breed are good.

Due to being a groomer, I have been bitten by many breeds, and my dogs have been attacked by several breeds while in public. It would actually be much easier to name the breeds that I have worked with personally that have never shown any human aggression. It's a pretty short list.

To answer a question that's been asked over and over again, is there a quantitative difference between a pit bull terrier bite and any other breed? No. Is there a difference between a pit bull bite and a chihuahua bite? Yes, of course. But am I more afraid of a pit bull bite than a golden retriever bite? No. Am I more afraid of a pit bull bite than a bite from a Rottweiler or a Labrador or a German shepherd? No. It has to do with size, not breed. All dogs, regardless of breed, can inflict a level 4 to level 6 bite, as we heard on Monday from Cheryl Smith. So I find it insulting that the government would imply that a level 5 bite from a pit bull is somehow different from a level 5 bite from any other breed. Several breeds have the bite and hold, and I think the media have blown the pit bull bite and the type of bite they have totally out of proportion, with no scientific facts to back it up.

I was bitten by a Rottweiler. It took three people to get that dog off my hand. I was bitten once by a Shih Tzu and passed out. I needed medical attention for both bites. Both bites caused me to be out of work for a week.

Back to my short list of breeds that I have worked with that have never shown me any human aggression. Staffordshire bull terriers are on the top of that list, and this is one of the main reasons I chose them as my breed. They are absolutely the most stable breed that I have ever worked with in any situation. I do not want to spend a lot of time on the Staffie bull, as previous testaments have shown that it would be a crime to condemn this breed. Just the fact that Kitchener, England and France have exempted them speaks for itself. As previous speakers have said, including Diana Fischer, this breed should not be on your list, especially when you have absolutely no statistical information to support doing so. By banning entire breeds, you are punishing all the good dogs and responsible owners, who by far are the majority.

You say, "What's the big deal? All you have to do is spay and neuter and muzzle and leash your dog while you're in public." Well, for responsible owners who enjoy dog sports, it's a very big deal. It will stop those who enjoy competing in conformation shows, obedience, flyball, agility and any other dog sport. Some of these events require the dog to be off leash. In all these events, we could not participate if our dogs have to be muzzled. A muzzled dog cannot pick up a dumbbell in obedience or a ball in flyball. They would not be able to breathe well enough to do agility, let alone go jogging with us. Where does the quality of life go for these dogs and people who have worked so hard to get to the level of training that allows them to compete in these events?

What about the older dogs, 10 to 12 years old, who have never worn a muzzle? Not only is this law going to be difficult to enforce, but it will also be difficult to comply with. It will be very difficult to get an old dog to wear a muzzle. They will fight it until they get it off or pass out, and I've seen this happen enough times. Training a dog to wear a muzzle is best done at a young age. To stress an old dog who truly does not need a muzzle would be heart-wrenching.

I have been bitten by more dogs and more breeds of dogs than all in this room put together, probably. But I

am not a victim. But if this bill passes as is, then you will be victimizing me, as I will be unfairly and unjustly targeted for the type of dogs I have and by what my dogs and I have never done, and you are doing this without any statistical data to back it up.

We must look at who's holding the leash; they are the ones in control. If they aren't, then they have no business owning that dog. We can also look farther. Where did these aggressive dogs come from? Are they registered with the CKC or AKC? Did they buy it from a pet store or out of the newspaper? I would bet you that if you looked into it, you would find that 80% or more of the reported incidences were from dogs not registered with the CKC or AKC or registered American pit bull terriers. And, for that matter, they were not purchased from reputable breeders.

People who pay a lot of money for a dog usually are educated in their chosen breed. They tend to take ownership in a very responsible way. This is not to say that all people who have purchased their dogs through other ways are irresponsible. I believe that, for the most part, they are responsible dog owners. My point is that reputable breeders charge a substantial amount of money for their dogs, in part to weed out those who do not do their homework or who are wanting the breed for the wrong reasons. When you spend upwards of \$1,000 to \$2,500 and have to wait on a waiting list for up to a year for your family pet, you're going to take it seriously. This is a big purchase. You can get a dog for \$200 to \$600, but what are you getting? The people who come to me for a puppy have already done their homework. I do not advertise in the paper, so they have to find me. They already know—

The Chair: Just to inform you, you have about two minutes.

Ms. Dineley: —what the breed's all about and are willing to pay for a quality dog from a breeder who will stand behind what they produce and sell as family pets.

I agree with all the positive suggestions made before me and I urge you to look seriously at the suggestions that have been made, just to cut through some of this.

I would also like to add to some of this. Stop the sale of dogs in pet stores. This will help stop the brokering of dogs from the US and put a lid on puppy mills here. CKC breeders that are members are not allowed to sell dogs to pet stores.

Stop the sale of dogs through newspapers. This will help curb a lot of backyard breeding. It would make it a

lot more difficult for unscrupulous breeders to sell their dogs.

All unregistered dogs must be spayed or neutered. This would also help stop backyard breeders from breeding the dog down the road just because they want to have puppies.

I believe the most important suggestion is public education, especially children. Some of these tragic bites might have been prevented if people were educated on how to interact properly with dogs, and especially how not to. This is the key.

I have actually seen a decline in the past 25 years of training and control of large dogs coming into my shop. Some 25 years ago most large dogs were respectful and well trained, and now, quite honestly, I see the opposite.

In conclusion, all dogs and breeds of dogs can be dangerous, just as all dogs and breeds of dogs can be perfect canine citizens. I believe the only difference between a good dog and a potentially bad dog is the owner.

The Chair: Thank you. You have used up all of your time and it doesn't afford the opportunity to ask questions. I want to thank you very much for coming in today.

I also want to acknowledge everyone in the room for their fortitude. You've all shown patience and good humour and given all the deputants your attention. The briefs today were interesting, informed and incisive. They were diverse, well researched and even passionate.

This committee provides advice to the Legislative Assembly. Taken together, your submissions are a formidable body of advice and knowledge. On behalf of all the elected members and the legislative staff today, I want to thank you for your time, your presence, and especially for your body heat in keeping this meeting room warm on a very cold day.

This meeting is now adjourned. That means you can give yourselves and your fellow presenters a little bit of applause.

Mr. Zimmer.

Mr. Zimmer: Mr. Chairman, I think on behalf of all of us here, including everybody in the room, I've never known anybody who could run a meeting so well. There were 29 presenters, who had either 10 or 15 minutes, and you kept us all on time, including me, and the great challenge, of course: keeping Mr. Kormos on schedule. So thank you, Mr. Chair.

The Chair: Thank you very much.

The committee adjourned at 1652.

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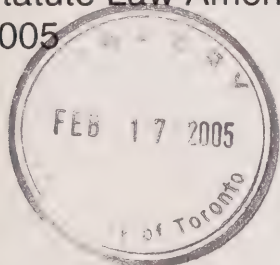
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Standing committee on the Legislative Assembly

Public Safety Related to Dogs
Statute Law Amendment Act,
2005

Comité permanent de l'Assemblée législative

Loi de 2005 modifiant des lois
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Wednesday 2 February 2005

Mercredi 2 février 2005

The committee met at 1000 in the Brantford and District Civic Centre, Brantford.

PUBLIC SAFETY RELATED TO DOGS
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI CONCERNE LA SÉCURITÉ
PUBLIQUE RELATIVE AUX CHIENS

Consideration of Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act / Projet de loi 132, Loi modifiant la Loi sur la responsabilité des propriétaires de chiens pour accroître la sécurité publique relativement aux chiens, y compris les pit-bulls, et apportant des modifications connexes à la Loi sur les animaux destinés à la recherche.

The Chair (Mr. Bob Delaney): Good morning, ladies and gentlemen. Welcome to the standing committee on the Legislative Assembly. This morning we're considering Bill 132, Public Safety Related to Dogs Statute Law Amendment Act, 2005. In the spirit of the subject of the bill, I say to all the members present, "Sit!"

Interjection.

The Chair: Mr. McMeekin suggests that I perhaps avoid the command "Roll over."

UNITED KENNEL CLUB

The Chair: Is there a representative present from the United Kennel Club? Welcome. You get the first word this morning.

Ms. Cindy Cooke: I like that, if I can have the last as well.

The Chair: That we can't promise, nor much in between. However, the ground rules are more or less as follows: You have 15 minutes for your presentation this morning. You can use as much of it as you wish. If you have time remaining after you've finished your remarks, the time will be divided equally among the parties to ask you questions to perhaps amplify any point you've made. The floor is yours; please commence.

Ms. Cooke: My name is Cindy Cooke, and I'm here speaking on behalf of the United Kennel Club, which is the largest working dog registry in the world. We're located in Kalamazoo, Michigan, not too far from here.

I've provided each of you with three folders. The white folder contains evidence from a trial last summer in Toledo. The first article in there is the testimony of Dr. I. Lehr Brisbin—it's double spaced, so it's not as much reading as you think. Please read it. Dr. Brisbin is a scientist. He's the leading expert on the structure, physiology and temperament of the American pit bull terrier. In his testimony he pretty much deconstructs every myth about this dog. The red folder contains articles explaining why breed bans do not work and have not worked in other communities. I will talk about the contents of the blue folder later.

A good solution to the problem of dog bites in any community must be legal, just and effective. A breed ban is inherently unjust. You penalize thousands of good dog owners when you really only want to penalize a handful of irresponsible dog owners causing the problem. You will kill thousands of good dogs in your attempt to eliminate a few bad ones. Also, breed bans have proven ineffective. Shelters fill up with unadoptable pit bulls. That leaves no room for dangerous dogs of other breeds or for adoptable dogs. Criminals, of course, will continue to ignore breed bans, just as they ignore your gun laws and your drug laws, and other dangerous dogs will continue to threaten the community.

Numerous Michigan jurisdictions have repealed their breed bans in favour of non-specific dangerous-dog laws. Detroit and Saginaw, Michigan, are probably the two closest that have recently repealed these.

The pit bull is the dog du jour, which is normally the focus of most of this type of bill. Most of you probably aren't really sure what a pit bull is. "Pit bull" is a term that has been applied to various breeds of dogs that were created by crossing terriers and bulldogs, which were used, at some point in their history, in the cruel sport of dogfighting. Here are some of the pit bull breeds: the American Staffordshire terrier, the American pit bull terrier, the Staffordshire bull terrier, the bull terrier, the miniature bull terrier, the Boston terrier and the boxer. Despite their names, the American Staffordshire terrier and the American pit bull terrier are, in effect, the same breed. The AKC calls them American Staffordshire terriers, and the UKC, American pit bull terriers.

One reason these breeds are targeted so often is because there are so many misconceptions. One of the common misconceptions is that this is a rare breed, and so the number of bite incidents attributed to them is

wildly disproportionate to their numbers. In fact, in the United States it is the 32nd most popular purebred registered dog. That means there are more purebred pit bulls in the United States than collies, St. Bernards, Akitas, Dalmatians and, of course, my beloved Scottish terrier. You have to assume that we must be wildly courageous to have all these thousands of savage dogs living in our homes, or perhaps they're not quite as terrible as they've been made out to be.

Another misconception is that pit bulls are selectively bred for the purpose of dogfighting. In fact, pit bull breeds are relatively new breeds. They were developed in the late 19th century. Dogfighting was outlawed in the 1930s. So the majority of pit bulls have been selectively bred as family pets for many more years than they were ever bred as fighting dogs. And as any breeder can tell you, any trait not rigorously selected for in a breeding program is quickly lost because of the genetic diversity of dogs.

Here is another misconception: Pit bulls are more likely to attack people than any other breed. In fact, in the bad old days when dogfighting was legal, any pit bull that attacked a person was shot dead where he stood. The reason for this was that pit bull fighting rules required that each owner first wash the dog of his opponent. Now, if you were going to get bitten by your opponent's dog, that was not going to make for a good evening. Also, it was customary for these people to let their children play with their fighting dogs.

The American Temperament Test Society keeps a Web site where they show past-fail rates for different breeds. If you go to the Web site, you will see that AmStaffs and American pit bull terriers have the same passing rate as golden retrievers, and about a third more AmStaffs/APBTs have been tested. In addition, a five-year study done in the Cincinnati Law Review in 1982 specifically considered pit bulls and concluded that "statistics did not support the assertion that any one breed was dangerous."

Finally, the English pit bull, which is the Staffordshire bull terrier, is the most popular terrier breed in Great Britain. Its nickname is the nanny dog, because it is specifically so good with children.

Do pit bulls bite more than other breeds? Well, not according to your public health agency. Of the records in their study, the most common breed of purebred dog to bite is the German shepherd, followed by the dreaded cocker spaniel.

Why are pit bulls targeted so often? Well, my theory is that there is this terrible synergy at present among five groups of people: criminals, journalists, lawyers, dog owners and politicians.

Let's start with the criminals. The rise of the urban drug culture is also related to an increase in gun-involved crimes and dogfighting. Dogfighters love to exaggerate the ferocity of their dogs: "My dog can tear the bumper off a Dodge Durango." The dog can't do that, but they will say that. His criminal buddies, his drug-dealing buddies who are at the dogfights, think, "I've got to get

me one of those. I could put that in front of my drug stash and my money stash and keep the cops away." So these dogs, bred willy-nilly, ignored and mistreated by their owners, neglected and abused, are then allowed to threaten neighbours and police. Young, wannabe thugs who adopt the accoutrements of gang culture—the baggy pants, the hats turned backwards—also think it's cool to have these dogs. These kids may not necessarily be criminals, but they have no idea how to train and socialize whatever breed of dog they own, and they get involved in informal dogfighting, increasing the chances that their dogs will hurt someone. Please remember that the criminal element owning pit bulls represents the tiniest percentage of dog owners who own this immensely popular breed.

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Now we come to the role of the press. In my opinion, these guys are the real problem because of the way these stories are reported. First of all, they repeat exaggerated tales of the dog's ferocity and ability. You've probably heard about the 2,000-pound-per-square-inch bite. That was invented by a man named Ripley, who used to write a column called Ripley's Believe It or Not! Not.

They promote these pit bull myths. They report bite incidents without context. Channel 4 in Detroit once reported: "Pit Bull Mix Attacks Child in Schoolyard." I spent a day tracking the story down. The dog belonged to one of the children. It was identified as a pit bull mix, instead of just a mix, by one of the eight-year-old children in the schoolyard. That's who told the cameraman, who told the reporter, that it was a pit bull.

In addition, they fail to contact dog experts for background information. I find myself on the phone constantly saying, "Hi. I'm a dog expert. Would you like me to answer any questions about this story?" "No." As a result of all this media attention, I do think that the AmStaff and APBT have, to some extent, become the dogs of choice for irresponsible and criminal dog owners.

Now we look at lawyers: 1-800-DOG-BITE. You can call that in the United States if you get bitten by a dog. We love to litigate in the United States. Every dog bite is now reported, regardless of how minor, and I think many are exaggerated for the purpose of increasing judgments. In addition, this kind of litigation encourages a culture where every activity must be 100% safe or face litigation. This causes animal control people to be a little more concerned about any dog over 30 pounds.

Irresponsible and criminal owners represent the tiniest population of pit bull owners, but they are responsible for all the attacks by dogs on people and for all the harm done to these dogs. That dog's ears are pinned back on to him because they were torn off, because someone let him fight.

The Chair: Just to let you know, you have about three minutes remaining.

Ms. Cooke: So what do you do? You can choose to be politicians—quick fix, 30-second sound bite—or you can be political leaders with a solution that is legal, just and effective.

If you're going to make a good decision, you want people to advise you: on the one hand, dog owners, dog breeders, dog trainers, veterinarians, animal behaviourists, animal control officers—these are the dog experts who oppose breed bans—and the other, Mr. Bryant, a smart guy with lots of credentials but not a dog expert.

I have brought you, in the blue folder, *The Community Approach to Dog Bite Prevention*, published by the American Veterinary Medical Association task force on canine aggression and human-canine interactions. This plan was implemented in Nevada and reduced dog bites 15% in the first year. This plan works. It's a non-breed-specific dangerous-dog law. It requires education; it requires interaction with the media and the community.

I could solve your juvenile delinquency and violent crime problem in a day by locking up all men between the ages of 12 and 40. I could solve your unwanted teenage pregnancy problem by locking up all girls 12 to 20. That's not how we solve problems in a free society.

Do you have any questions? Did I use it all up?

The Chair: You've pretty much used up all of your time, but thank you very much for coming in today.

Ms. Cooke: Thank you for giving me the opportunity.

The Chair: Is Darlene Wagner in the room?

Mr. Toby Barrett (Haldimand-Norfolk-Brant): On a point of order, Mr. Chair—I'm just joining this committee. As Chair, are you not setting aside time for questions between presentations?

The Chair: We are when the deputant leaves sufficient time. If they leave sufficient time for one question, it will go by rotation by caucus. In this case, the deputant ran right up to the limit.

Mr. Barrett: OK.

Mr. Peter Kormos (Niagara Centre): On another point of order, Mr. Chair: I just want to tell you how pleased I am to be in Brantford, Mr. Levac's riding, and to be the beneficiary of his usual hospitality.

Mr. Dave Levac (Brant): Red carpet.

The Chair: That's right. Let it be noted for the purpose of the record that the city of Brantford rolled out the red carpet for the committee on our day here at the Brantford Civic Centre.

DARLENE WAGNER

The Chair: Darlene, welcome this morning. You have 10 minutes for your presentation to us. If you leave some time at the end, it will allow the parties to ask you some questions. The floor is yours. Please proceed.

Ms. Darlene Wagner: Good morning. My name is Darlene Wagner. I'm a letter carrier in Chatham.

Thank you for allowing me the opportunity to present my views to you concerning Bill 132. The opinions I'm about to express are strictly my own and do not represent the views, opinions or positions of my employer, Canada Post, or my union, CUPW.

I've worked for Canada Post for 28 years. June 2, 2004, was the worst day I've ever had working for Canada Post. I was attacked by two pit bulls while I was

delivering mail on Sandys Street in Chatham. I'm a vacation relief carrier. When you're a relief carrier, you don't know where all the dogs are and stuff, unless you've done that route numerous times before. This was the third day on this walk.

As I walked up the steps to deliver the mail to the townhouse, I noticed the inside door was open, but the screen door was closed. Then I heard what sounded like dogs running in the house. I had no idea there were even dogs there. I backed down the stairs, and then I noticed the dogs hit the screen door, and out they came. I didn't even have a chance. The dogs were coming at me.

I tried to get away, when I fell backwards over the curb, breaking both my wrists. I managed to get my right hand up to protect the right side of my face. I kind of tucked and tried to protect my face, because one dog was coming right at my face. One dog sunk its teeth into the right side of my head; the other came to the left side of me and grabbed on to my mailbag. My mailbag was what helped save me from being further injured on my left side. I was screaming for help. The owners came out of the house and pulled the dogs off me. My right ear was torn off because the dog would not let go of me.

For the past eight months, my life has been far from normal. I couldn't do anything for myself, with both hands and arms in casts, and my ear—what was left of it—stitched and bandaged. I have never been in so much pain in my life. I still have to deal with it daily. I've been asked if I have nightmares. I don't. I have daymares. Every time I move my hands or look in the mirror, I relive what happened to me.

This has also been a very difficult time for my family. My son has to take time off work to take me to London for doctors' appointments and my surgeries. Bruce is here with me today. My little four-year-old grandson has a terrible time with the loss of my ear. I try to remember to keep him on my left side so he won't cry. He's terrified of strange dogs now.

I'm not back to work yet. I really don't know when I'll return. I've had three surgeries so far on my ear, possibly two more to go. I have to go to physiotherapy every day for my wrists, and I still have problems getting my strength back in my hands and wrists. Despite all of this, I consider myself lucky. I could have been maimed for life. I thought I was going to die.

I am the face of a vicious pit bull attack. I am not a statistic. I am a human being whose life has been permanently altered.

As a letter carrier, one of the risks of my job is dog bites. In fact, I needed 14 stitches in my right arm for a dog bite in 1976, and that was a Lab-shepherd cross. Most dogs will bite and run away, but the pit bulls latch on and don't let go.

I am not a dog hater. I have two little dogs of my own. Their unconditional love and the support of my family, friends, fellow Canada Post employees, US postal employees and Chatham-Kent residents has kept me going through a terrible time in my life.

I support Bill 132. We need to stop these vicious attacks. Make dog owners accountable for vicious attacks and bites by their dogs.

The streets are my workplace. We need our communities to be safe for all of us, including our pets, whether it's when we are working or just going for a walk.

Thank you.

The Chair: Thank you very much for having come in and to have shared your experiences with us. We have about a minute and a half from each caucus for questions.

Mrs. Julia Munro (York North): Thank you very much for having the courage to come here today and relive, once again, the experience that you've had. Certainly all of us, I think, are deeply moved by the fact that you were at that kind of risk and suffered the way in which you did.

I guess my concern is the fact that you mentioned that you had experienced a bite back in 1976.

Ms. Wagner: Yes. I have 14 stitches in my arm right here.

Mrs. Munro: Our concern is the fact that, as the opposition, we are looking at a definition of "dangerous dog," because we don't think it's something that is determined by the appearance of the dog. I appreciate that your experience was with a dog of a specific type, but I put forward a private member's bill to address the issue of a dangerous dog: one who inflicts serious injury. I think that's the kind of initiative that we see other communities taking and one which we think should help.

You raise the issue that, at the end, it is the owners. We certainly agree and trust that the further physio and surgeries that you might be facing are successful.

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Mr. Kormos: [*Inaudible*] narration.

Ms. Wagner: Yes, it was very frightening.

Mr. Kormos: There is so much we could talk about. I want to indicate that I think everybody on this committee is looking for the best possible way to control/end these types of vicious dog attacks.

In your circumstance—you are working—is your recourse through workers' comp., WSIB?

Ms. Wagner: Yes, it is.

Mr. Kormos: Are you precluded, because you're in the WSIB system, from litigating or suing the owner of the dog?

Ms. Wagner: On my own, yes.

Mr. Kormos: What about the follow-up? Were the police called? Were any charges laid against these owners? Are you aware of what happened?

Ms. Wagner: No charges were ever laid against her.

Mr. Kormos: Were the police called?

Ms. Wagner: The police were called, the ambulance was there, everybody was there, but no charges have been laid. I did a full report with the police and it was presented to crown counsel and no charges were laid against her, and that's what really upsets me. That's not right.

Mr. Kormos: We've been hearing that from witness after witness in town after town after town.

Ms. Wagner: That's what I'm upset about.

Mr. Kormos: Even the existing legislation, the Dog Owners' Liability Act, isn't being enforced—

Ms. Wagner: No, it's not.

Mr. Kormos: —and that rots my socks. It's an injustice to you and others like you.

Ms. Wagner: Yes, it is.

The Chair: Thank you. Mr. Zimmer?

Mr. David Zimmer (Willowdale): You told us about the earlier dog attack many years ago—

Ms. Wagner: Yes, in 1976.

Mr. Zimmer: —and the more recent attack by the pit bull. I think you make a very good point, and you made it quite eloquently, that pit bull attacks are just qualitatively different than attacks from other dogs.

Ms. Wagner: They are.

Mr. Zimmer: Why do you say that pit bull attacks are qualitatively different from other attacks?

Ms. Wagner: They just seem to be so aggressive. If they've got it on their mind that they're going to attack you, they will. They will attack you and they will hang on. It's been our experience that they just will not let go of you.

Mr. Zimmer: Of course, you say that as someone who has been attacked by both types of dogs.

Ms. Wagner: Yes, exactly. I've been bitten over the years numerous times by dogs, but the two serious ones were with the stitches in my arm and the pit bull attack. Over the years, I've been bitten by other dogs. They'll come up and nip you, and then they're gone. I've had fingers chewed and my ankles bitten and stuff like that by little dogs, but they just bite you and then they're gone.

Mr. Zimmer: Notwithstanding that history of dog attacks, it's pit bulls that put the fear in you.

Ms. Wagner: Oh, yes.

The Chair: Thank you very much for having come in this morning and to have shared your thoughts with us.

Ms. Wagner: Thank you for letting me speak.

DOG LEGISLATION COUNCIL OF CANADA

The Chair: Is there a representative present of the Dog Legislation Council of Canada? Please sit down and make yourself comfortable. You have 15 minutes to address the committee this morning. You can use all or part of the time. If any time remains, it will be divided among the parties to ask you questions. The floor is yours. Please proceed.

Mr. Steve Barker: Ladies and gentlemen of the committee, my name is Steve Barker. I'm from the Dog Legislation Council of Canada.

I would first like to thank you for the opportunity to speak today and I would like to thank all those involved in these hearings, including all the people behind the scenes who have done a lot of hard work to make these hearings a reality.

The Dog Legislation Council of Canada, of which I am the Ontario director, has a three-part mandate: to promote responsible and accountable dog ownership; to assist communities in developing effective legislation that enforces that responsibility; and to educate the public regarding dog-bite awareness.

Over the past few months, we have heard and read some public statements that have been very difficult to accept. Much of this has been in the media, with various members leaping to tenuous conclusions, quoting from highly questionable sources, and misquoting or misusing statistics and massaging and manipulating them into their desired image.

As much as possible, we try to correct these inaccuracies by bringing them to the attention of the journalists and the editors. We're hoping to gradually change the climate in which these stories are created, so that the media will be able to assist us in the bigger issue of dog bites.

We have a much bigger issue, however, with a government that is willing to accept erroneous and misleading information as fact on which it intends to base laws that, in turn, will deeply affect all of its constituents. As a person who tends to analyze issues carefully and logically, I find this attitude incomprehensible, and as a taxpayer and a voter, I also find it offensive. I was appalled at the ease with which this government accepted media statements and suspect studies as God-given fact and then allowed these to guide it on to its current path.

I feel that it's important to provide, in one single place, all of the erroneous statements that have been made publicly over the past few months. Many of these statements were made by the Attorney General. I feel that, as a lawyer and as the Attorney General of the largest province in the country, he and his office, more than anyone else in this process, should have put a little more time and effort into research and perhaps a little less into public pronouncements.

Attached to my presentation and also provided on CD are 12 groups of public statements made in 2004 by various members of the government. These statements are either factually incorrect, scientifically already disproved, scientifically not provable or significantly exaggerated. Along with each of these, I've included some information from publicly documented studies that contradict all of these ideas. Sources for these studies include the Canada Safety Council, the Centers for Disease Control in Atlanta, the Supreme Court of Alabama, the Legislative Assembly of the United Kingdom and various studies performed by genetic scientists in the United States and Germany.

The substance of the statements made by the government is essentially:

- Pit bulls are inherently dangerous animals;
- Pit bulls are qualitatively different from other dogs;
- Pit bulls attack more frequently than other dogs;
- Pit bulls attack more viciously than other dogs;
- Pit bull incidents are significantly out of proportion to their population;

- We will have few problems identifying pit bulls;
- Pit bulls will not be abandoned to humane societies in large numbers;
- Pit bulls will not be replaced by other breeds;
- The government consulted with all possible experts;
- The government has broad municipal support.

In my attached document and on the CD, you will see my responses to those statements.

I would like to address one particular question which encompasses a number of areas. It appears to me that Mr. Zimmer, in particular, has been asking this question throughout the hearings, and I hope to shed some light on this issue: Are the three targeted breeds qualitatively different from other dogs? This brings us to the heart of this legislation. Do we need to treat pit bulls, as they are called in Bill 132, any differently from any other dog?

Over the years, due to a large population of the three breeds and dogs that look like them, due to some really bad owners who made some really bad choices, and due to what is probably a significant number of breed mis-identifications, the pit bull has become a media favourite. As the stories abound, this type of dog has become almost an urban legend, the "super dog" if you will. Newspaper and TV coverage have caused the average Canadian to believe that the typical pit bull, every pit bull, always leaps at the fence snarling as you walk by, that it is lying in wait for the next postal worker or the next meter reader who dares invade its territory, that its drooling lips and intense eyes mean that it's just waiting to pounce on you, if its owner would just let it reach you. That is the image that is portrayed of the typical pit bull. It's images like these that make it to the newspapers, that get published on Web site after Web site, that get regurgitated by politicians in their quest to pacify that angry, media-misinformed public, despite the numerous scientific studies that have disproved these theories once and for all.

In order to best answer this question, "Are these breeds qualitatively different?", we must break it down into the major points that the government has been making and discuss whether or not there is any factual, scientific and statistical basis for all of these statements.

The first is, pit bulls are inherently dangerous. The Supreme Court of Alabama, courts in New Jersey and Ohio and a court in Ontario have all accepted scientific evidence that no breed is genetically more aggressive than any other breed. This means that the American pit bull terrier, the American Staffordshire terrier and the Staffordshire bull terrier are no more or less inherently dangerous simply because of the way they were born.

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A study conducted in Vienna examined the entire genetic aspect of aggression and what they came up with is that aggression is affected only fractionally by genetics and that environment and training had significantly more impact on the aggressiveness of a dog than who its parents were.

The Attorney General also stated that because there are insurance companies that won't insure pit bulls, that

means they're dangerous. We have insurance companies in this country that will not insure German shepherds, Dobermans, Rottweilers or even collies, and yet the Attorney General has stated on television that two of these breeds are not inherently dangerous.

The Attorney General also stated that the shepherds he grew up with would not attack anyone because they were properly trained. Does this mean that if they were not trained, they would have attacked? If that's true, does that mean those shepherds were also inherently dangerous?

The next question is, pit bulls attack more frequently than other dogs.

In the Legislative Assembly, the Attorney General listed 11 pit bull attacks on humans that had occurred within the previous 69 days. This was done to demonstrate how frequently pit bulls attack. In the list, he made no mention of how serious each of the attacks were; he just consistently used the words "attacked" and "mauled" and he did not list any attacks by other breeds. Two of the cases that he listed in the Legislature turned out not to be any of the targeted breeds at all. One was a Rottweiler, and one was a German shepherd, the very breed he grew up with and stated was not dangerous. During that 69-day period where those nine incidents occurred, there were an estimated minimum of 4,600 dog bites in Ontario, and probably closer to 6,000, according to the Canada Safety Council, the Toronto Board of Health and some other experts from the United States. That means that of those nine incidents he picked that were pit bulls, there were close to 6,000 other incidents in Ontario during that time. In Ontario every single day, there are 89 bites that require somebody to seek medical attention. The targeted breeds and the other dogs that happen to be labelled pit bulls account for less than 5% of all of those bites.

So then we get to the next question: Pit bulls attack more viciously than other dogs.

The Attorney General has quoted a study that discusses both frequency of attacks and severity of them. This study is a well-known piece of fluff created by a man named Merritt Clifton in Washington state. This man is currently being sued in four separate court cases because of his wildly inaccurate statistics. The statistics, by his own admission, come from media-only reports over a period of 20 years. His mathematical methods of calculating total bites are scientifically and statistically invalid, and I've looked at that study myself.

A Liberal member stated, "One child attacked and one person killed is too many for one breed." The statistics in Canada show that 12 different breeds have killed people in Canada, including a Labrador retriever and the Attorney General's beloved German shepherds. In fact, with the German shepherd in St. Catharines that attacked the two young boys, one boy had serious bites to his face, he had his leg bones crushed, and he spent a day and a half unconscious in the hospital.

We have some very horrifying stories of attacks by other breeds in Ontario, many of which are given a paragraph or two in small-town newspapers, don't even

make it to the big-town newspapers, and the TV coverage is almost nil.

Are pit bull incidents significantly out of proportion to their population? Using actual registrations from the various registries in the United States, we estimate that there are more than five million purebred American pit bull terriers in the United States. That equates to almost 9% of the estimated dog population, not 1%. Those are registered purebreds with papers. Compare this to the approximately 800,000 German shepherds and all of a sudden, the pit bull bites start to fall into line with their population.

At the same time that the American Kennel Club was registering 145,000 of its Labrador retrievers, its most popular dog, the American Dog Breeders Association was registering 225,000—55% more—American pit bull terriers. This dog was, and still is in many places, the all-American family dog. We need to take a fresh look at the bite statistics and discover that the pit-bull-type dog actually has one of the lowest bite ratios when compared to its population. So if the answer to all of these questions is no, then the answer to the ultimate question on which the entire breed-specific portion of this bill is based must also be no.

For your information—and I would really appreciate it if you would look at these documents—on the CD that I've included is legislation from the city of Calgary, the province of Saskatchewan, the state of Illinois, the state of California and the state of New York. These laws have clear definitions of what is and what is not acceptable behaviour from a dog, what constitutes a breach of responsibility by an owner and what the consequences are of violating these laws. They clearly define "menacing behaviour," "physical injury," and—

The Chair: Mr. Barker, you have about two minutes remaining.

Mr. Barker: Two minutes? OK.

There are consistent themes running through all these: The owner must be in control of the dog; the owner is responsible legally and financially; and the owner faces significant repercussions. The 36 recommendations from the Courtney Trempe inquest, the James Waddell inquest and the American Veterinary Medical Association's task force also have consistent themes, and I've included those on the CD: education of dog owners; licensing and regulation of various dog-related organizations; enforcement of responsible and accountable dog ownership; and municipal, provincial and federal support.

A huge amount of work has gone into these studies. Their one goal is to reduce dog bites from all breeds. Do you really want to reduce the injuries caused by all dog bites from all breeds in this province? If so, please review these documents. They hold the key. The work has already been done. The solution has already been found and proven. If you read these documents and you act on what they suggest, you will have every single professional organization, every single ethical breeder, every single responsible owner knocking on your door saying, "How can I help?" Instead, we're looking forward to

court cases, unnecessary spending and a never-ending battle that's going to waste everybody's time, energy and money. The only people who are going to benefit from this bill are the media and the lawyers.

Albert Einstein once said, "The definition of insanity is doing the same thing over and over again and expecting a different result." We already know what works and what doesn't. We have more history, more results and more information than ever before. It's not necessary for us to repeat the mistakes of the past.

Thank you.

The Chair: Thank you very much, Mr. Barker. You've used up all of your time and, unfortunately, there isn't any time remaining for questions.

Mr. Barker: I appreciate the time today.

K-9 CONCEPTS INC.

The Chair: Is there a representative present from Mungar's Animal Control Services?

Please come forward. Sit down and make yourself comfortable. You have 15 minutes to address the committee this morning. If there's any time remaining, we'll divide it among the parties for questions. Please begin by identifying yourself for Hansard. The floor is yours. Please proceed.

Ms. Anne MacDonald: Good morning, Mr. Chair and members of the committee. My name is Anne MacDonald and I am the president of K-9 Concepts Inc. I have been working with dogs as a profession for just over 22 years. I have a private behaviour practice in the London area, as well as teaching group obedience classes for dogs and their owners. My company is well established and very well respected in the field of training and behaviour.

In my many years of working with dogs, I have trained, handled, rehabilitated and re-homed more than 5,000 dogs. As someone who works with canine behaviour as a full-time vocation, I would caution you that the legislation you are writing may do little to keep the public safe from dog attacks, and I believe that is really the task put before you: How do we keep the public safe from being bitten or attacked by dogs?

Do you realize that dogs communicate using body language and facial expressions, just as we do? We scrunch up our faces when we dislike something or smile to soften our expression when we are pleased. Dogs use similar expressions and are very good, to the trained eye, at communicating their intentions. I believe that by understanding dogs and studying their behaviour, most dogs and most dog bites are extremely predictable.

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Section 12 through to section 18 of Bill 132 makes no mention of any qualified expert, certified canine behaviourist or otherwise, being called upon to interpret for the dog or the dog owner. To the uneducated, dog behaviour can be as wide open to interpretation as the word "menace" in the legislation set out before us. How can we trust and expect those not trained in animal

behaviour to competently assess our dogs? Bill 132 puts all dogs and their owners in jeopardy. Dog owners should also be given the right to appeal any decision made by an unqualified person or persons in the event that there is an unsubstantiated claim against their dog.

But the question remains: How do we keep the public safe from being bitten or attacked by dogs? Muzzle or ban them? Sounds simple, but be aware that muzzling dogs does not necessarily make them any safer and banning dogs shows a lack of understanding and knowledge of the problem at hand. Legislation that clearly singles out dangerous dogs while putting the onus and restrictions on the owners would create a safer and less dangerous environment to the public. Let me, as a professional, assure you that dangerous dogs can come in all shapes and sizes. Owners make common mistakes, such as petting their dog to comfort it when upset, scared or barking, and that can lead any dog to show fear-based aggression later on in life. Even something as natural as getting your dog to chase a ball or playing tug-of-war can be a recipe for disaster if other parameters are not put into place by the dog's owner. Giving owners access to even the most basic fundamentals of dog training would be far more productive in protecting the public and, at the same time, man's best friend.

Know that muzzled dogs are generally under-socialized. The very existence of the dog in our society hinges not on the breed but rather on the dog's social experiences and lessons taught in the early part of their life. Owners with dogs required to wear muzzles are generally at a loss to properly socialize their dogs.

Know that muzzled dogs must be trained to wear a muzzle. Putting a muzzle on a dog is not like applying a Band-Aid. Dogs must be taught to wear a muzzle comfortably and be given time to adjust. Dogs not properly trained or conditioned to wear a muzzle can and will most likely be successful in removing the muzzle in a matter of seconds.

Know about muzzled dogs and public perception. Imagine walking into a room with an 80-pound dog straining on a short leash, wearing a muzzle. Would you go within 20 feet of that dog? Do you feel secure because that dog is wearing a muzzle, or is your perception that the dog is unsafe and can't be trusted? Do you walk way around that dog? Now imagine walking in that same room with the dog sitting, relaxed and behaving at the owner's side, wearing no muzzle. Do you feel insecure because the dog is not muzzled, or do you feel relaxed because the dog is showing appropriate behaviours? How did we as a society ever come to the conclusion that dogs that are muzzled are safer or make us feel safer? Clearly, as long as they remain untrained and under-socialized, they will not appear safe.

Dogs are amazing creatures. They can be trained to guide for the blind and physically challenged, save us from drowning, alert us to impending seizures, detect cancer before doctors, do police work, track almost anything with their nose and watch over our children. Why is it, then, this same species can appear on occasion to be

unpredictable, unbalanced and unsafe? The answer, I believe, is in education and training. Trained dogs are dependable, predictable and safe. We need education for the dog, education for the owners, the non-dog owners and the children. Writing legislation that creates fear and apprehension amongst both dog owners and non-dog owners is counterproductive. If we fail to make constructive changes in the legislation through education, then I feel we fail as a society. Dogs can be trained to have good manners and behave properly and owners can be taught how to be responsible for their dogs and the people in their community. If I might leave you with one little phrase to take home with you today, that would be that all dogs need training and most owners need help.

Let me quickly recap for you: Muzzling and banning breeds does not necessarily make the public safe; dogs and their behaviour can be predictable; dog owners need access to resources and basic education; and dog experts need to be involved in writing dog legislation that protects the public.

I thank you for your time.

The Chair: Thank you very much for coming in this morning. We've got a little bit of time for questions, approximately two minutes per caucus.

Mr. Kormos: Thank you, ma'am. You were here when Ms. Wagner was speaking to us, the postal worker, the letter carrier.

Ms. MacDonald: I just heard the last sentence or two.

Mr. Kormos: She, like others who have appeared before the committee, was the victim of a pretty vicious dog attack. In her case it happened to be, insofar as she knows, a pit bull. We've heard about attacks from German shepherds, from bull mastiffs. We've heard the dog stats of any number of dogs. Mr. Zimmer has really made a name for himself by going after witnesses and challenging them with the proposition that surely a bite from a pit bull is more significant than a bite from a chihuahua. And I'm inclined to agree. If I had my druthers, I'd rather be bitten by a chihuahua than by a pit bull or a German shepherd or a Rottweiler or a Doberman or a Lab etc., because I can displace the chihuahua a little more readily than I can the big dog.

What do you say to the observation that's being made by some people that somehow the pit bull—again, whatever that is at any given point in time—is so distinctively different from any other dog—Doberman, Rottweiler, Labrador retriever, golden retriever, Shih Tzu, what have you—that it is more dangerous, and distinctively more dangerous, to the point where we ought to ban the things? What do you say to that?

Ms. MacDonald: Well, I think there's always the potential for any dog there, but first of all, we haven't yet determined what the pit bull is as a breed specifically. That would be my first thought. Secondly, there's potential for any dog to do damage. We haven't yet proven that the pit bull does any more damage or any more often than any other breed.

Mr. Kormos: Have you worked with pit bulls, or what we call colloquially pit bulls?

Ms. MacDonald: All breeds.

Mr. Kormos: Part of my concern is that maybe it's just the very worst pit bull attacks that we're hearing about. We heard from an expert the other day who talked about six types of bites: the snap, the single bite, then the "grrr" bite, then the shake-the-daylights-out-of-the-rabbit bite, to the mauling bite. Are pit bulls as capable of the snap-at-you-and-then-retreat, that level 1 bite, as any other dog?

Ms. MacDonald: I believe any dog is.

Mr. Kormos: What about level 2, the piercing and then retreat?

Ms. MacDonald: It's a type of behaviour, so yes.

The Chair: Thank you. Mr. Zimmer?

Mr. Zimmer: You talked about muzzling. You made several comments that in your view, muzzling dogs is not a good thing for the reasons you said, that it wasn't helpful and that people were far better off facing unmuzzled dogs than muzzled dogs. But let me put this proposition to you: You're out walking in the park, you've got a couple of young children with you, and there's a pit bull or other great, big dog that starts charging toward you. Would you feel more secure if you saw that the dog charging at you and snarling had a muzzle on?

Ms. MacDonald: Until the point that he took the muzzle off, which would be seconds, and then he would be very agitated.

Mr. Zimmer: So walking down the park with a couple of young children with a big dog coming at you, you'd rather face an unmuzzled than a muzzled dog?

Ms. MacDonald: I don't believe, if he were unattended, that he would still be muzzled.

Mr. Zimmer: Well, the dog's coming down the park, you've got a couple of children with you, it's in attack mode. Would you feel safer if the dog had a muzzle on or would you feel safer if the dog were unmuzzled?

Ms. MacDonald: I would obviously feel safer if he were muzzled.

Mr. Zimmer: All right. Thank you.

The Chair: Mr. Miller?

Mr. Norm Miller (Parry Sound-Muskoka): Thank you for your presentation. Yesterday I was cross-country skiing with my Labrador retriever and I was thinking about muzzles. Having spent so many days now with these hearings, I was thinking about muzzles at that point. My dog is 12 years old, and I'm not sure he would have done the hour-long cross country ski had he been muzzled, because he was panting the whole time. Is it true that that would be a problem for a dog?

Ms. MacDonald: In extreme heat, sure, it could be, definitely.

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Mr. Miller: I just want to come back to one point that Mr. Zimmer made. He was trying to help reinforce the image of pits bulls being, I think he said, "great, big dogs." I am learning a lot in these sessions, and I gather that at least one of the breeds being targeted by the government, the Staffordshire bull terrier, is 14 inches tall.

So it doesn't sound like it's that big a dog: 14 inches tall and 30 pounds. Is that correct, and have you had experience with some of the specific breeds named? You say you've handled 5,000 dogs. Have you found them to be any more vicious or bite-prone than any other type of dog?

Ms. MacDonald: My experience has been that dogs of any breed that don't have a good beginning in life experience problems later in life.

Mr Miller: So these targeted breeds aren't worse than any other type of dog?

Ms. MacDonald: Not necessarily.

Mr Miller: And your question, right in your presentation, is, how do we keep the public safe from being bitten or attacked by dogs? I gather your advice is that education and training would be key components of what the government should be doing.

Ms. MacDonald: Education, training, resources, perhaps zoning—zoning in some places is very tough to get—funding for spay/neuter clinics, and education in the schools.

Mr Miller: Thank you very much.

The Chair: And thank you very much for coming in this morning.

BEAVER CREEK ANIMAL HOSPITAL

The Chair: Is there a representative present of Beaver Creek Animal Hospital?

Please make yourself comfortable. If you've been here this morning, you catch the general drift of the procedure. You've got 15 minutes. You can use all or part of it. Whatever remains will be divided among the parties for questions.

Dr. Mary Yett: Does everyone have my handout, "Punish the Deed, Not the Breed"? Have they already given that to you?

The Chair: I believe the clerk has already distributed it.

Please begin by identifying yourself for Hansard, and the floor is yours.

Dr. Yett: Thank you. My name is Dr. Mary Yett. I'm a practising veterinarian from St. Thomas, Ontario. I own Beaver Creek Animal Hospital. I have entitled my little presentation "Punish the Deed, Not the Breed." That gives you an idea of where I'm going with this.

I have been a practising veterinarian in Ontario for 20 years now, and I'm here to tell you that trying to ban pit bulls in Ontario will not work. All of us present here are united in a desire to eliminate human injury by dangerous dogs. Where we differ is on how to achieve that goal. Legislation that bans specific breeds does not produce long-term positive results. It is a flash-in-the-pan quick fix designed to get cheap headline news coverage.

Because it looks easy and sounds good on the surface, this route has been tried by many jurisdictions throughout the developed world. Most of these same jurisdictions end up repealing such legislation after a few years of experience living with its consequences. The list of such

jurisdictions includes the United Kingdom; Cincinnati, Ohio; and Detroit, Michigan. The number one reason for abandoning breed-specific legislation is the huge cost of litigation and enforcement that inevitably arises.

Breed-specific bans suffer from three main weaknesses: vagueness, over-inclusiveness and under-inclusiveness.

They are inherently vague because it is impossible to legally determine that a dog is or is not a pit bull or a pit bull cross. There is no DNA test to determine this, only opinion, and opinions vary widely. Even veterinarians and experienced dog breeders would have trouble determining the racial heritage of most mixed-breed dogs. Can you imagine the difficulty that untrained peace officers would face on this question?

The possibility for abuse of the law as proposed in Bill 132 is huge. A peace officer designated by the municipality and not necessarily trained could use any amount of force necessary to impound any dog that they see in a public place that happened in their opinion to look like it was menacing or sort of looked like a pit bull. The seized dog would then be killed or sold to a research laboratory to be experimented on, with no appeals process available to the owner. Other jurisdictions have repeatedly lost in court when owners of boxers, Labrador retrievers and assorted mutts sued them to save their beloved pets' lives. In Ontario, who would pay the months and months of boarding fees for these dogs while the court cases drag on in such a situation? Who would pay the legal fees? The municipalities? The provincial government?

The issue of over-inclusiveness would raise similar legal issues. Many, if not most, pit bulls and related breeds are actually sweet, docile animals with fiercely protective owners attached to them. I shudder to think of the thousands of innocent animals that would be slaughtered if Bill 132 is passed unamended. There are many other people who are appalled at this idea as well, and some of them have hired very expensive lawyers.

Under-inclusiveness is also a significant defect in this legislation. The most common breed that bites people, as reported by the Canadian hospitals injury reporting and prevention program, is the German shepherd, followed by cocker spaniels, Rottweilers and golden retrievers. None of these breeds is addressed in Bill 132. Any dog can bite—any dog. It is the human factor that must be influenced by legislation to encourage responsible genetic selection, rearing and training of dogs to control aggression and human injury.

Classifying all dogs with a similar appearance as inherently dangerous is analogous to racism. Politicians who hype the fear of pit bulls to the media are self-serving at best and dangerous in their own right at worst. A society that is driven by illogical fear and panic does not even come close to our Canadian ideal of fairness, tolerance and a peaceful society. It is instead eerily reminiscent of fascism and the "final solution."

What we need to solve the problem of dangerous dogs is a more rational approach that addresses the root cause of the problem; namely, poor dog ownership, breeding and training. A comparison can be drawn to the issue of

reducing injuries and fatalities related to drunk driving. The prohibition of alcohol didn't work and instead resulted in the proliferation of speakeasies and mobsters. What is starting to work now is an investment by governments in educating the public that it is socially unacceptable to drive while drunk, and strict enforcement with severe penalties. It will take a similar investment in time and money by the governments of the day to educate the public that it is socially unacceptable to have a poorly trained dog running around loose. It will also take a similar approach of strict enforcement and severe penalties.

The real solution is not simple or quick, and so is not very appealing to media-hungry politicians. I appeal to those politicians—and I'm assuming that includes you in this room—who truly care for the long-term well-being of society, like my MPP, Steve Peters, does, to remove the breed-specific ban part of Bill 132 and concentrate on the proven dangerous-dog portions of the bill. Any dog that exhibits unprovoked aggression should have strict restrictions placed on it, much along the lines of the dangerous-dog provisions in Bill 132. These laws would also indirectly reduce municipalities' expenses for caring for strays, as the overpopulation of dogs would be lessened. I have attached to the back of my handouts copies of the Ontario Veterinary Medical Association's Policy Position on Dangerous Dogs. It is an excellent guide and resource.

Dogs and humans have lived together since the Stone Age, and dog ownership is largely considered a natural right. Ancient habits and attitudes that evolved in a sparsely populated rural setting are now out of place in our crowded modern-day reality. I propose a radical shift in thinking and legislation that would make dog ownership a privilege, not a right.

I would like to see Ontario gradually phase in a process where individuals must obtain a dog ownership licence before they are allowed to possess a dog. A one-day dog husbandry and training course, concluding with a knowledge test, would be mandatory, along with a small fee. This is a similar concept to a driver's licence or a firearms licence to make sure that people involved in activities with potential public safety issues have at least a baseline of training.

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The fee for registering each dog should be quite modest if the dog is spayed or neutered. Proof of current rabies vaccination should be required for registration. If the dog is not spayed or neutered, the registration fee should be substantially higher. The fee for possessing a dog without an ownership licence or an individual dog registration should be extremely high and should escalate substantially with repeat offences, even including jail time. If the fines were high enough, they would generate sufficient revenue for municipalities to hire enforcement officers. I leave my notes here. You guys have heard over and over again how dangerous-dog laws are not being enforced. That's a money issue. This system would greatly reduce the volume of poorly trained, poorly

maintained dogs kept as guard dogs. This is the type of dog that is often the aggressive dog that threatens the public.

Owners living in rental units should be required to produce written proof of their dog's registration or the landlords should be allowed to evict them. This point is significant because the majority of at-loose, aggressive dogs are owned by people living in rental units.

To sum up, breed-specific bans do not work, primarily because they do not hold up in court. To legislate that all dogs of a specific breed are inherently dangerous does not hold up in court. To classify any mixed-breed dog with a broad head and short hair as a "dangerous dog" does not hold up in court. To delegate the decision of what is a pit-bull-type dog to untrained bylaw enforcers or even police officers does not hold up in court. Such legislation does not hold up in court because it is not logical or fair, and courts around the world recognize that fact. I hope that you will too.

By the way, the OVMA—the Ontario Veterinary Medical Association, of which I'm a member—is against this legislation as it stands, but if you get rid of the breed-specific part and concentrate on the dangerous-dog part, they'd be behind you all the way. They'd help make you look like heroes to the media. OK? I really don't want to see this government do something that is just going to waste everybody's time and money, cause a lot of tragedy and not solve the problem. What we all want are results. The OVMA policy has already been presented, so I'll just let you read that part.

The Chair: Thank you very much. We've got time for one quick question per caucus, beginning with Mr. McMeekin.

Mr. McMeekin: Dr. Yett, I appreciate your presentation. You mirrored many of the things we've heard from other presenters.

That having been said, I want to just say, for the record and for anyone else who's listening, that I know the Attorney General of the province of Ontario. The Attorney General is a friend of mine. I don't always agree with the Attorney General; in fact, I think there are some changes that need to be made to this legislation. But when people walk around making references to the "final solution" and fascism, it just strikes me—

Dr. Yett: It's scary stuff.

Mr. McMeekin: Well, what's even scarier, if that wasn't scary enough, was your reference to "thousands of innocent animals that would be slaughtered."

Dr. Yett: Absolutely.

Mr. McMeekin: I don't see it that way. Can you explain that a bit more to me?

Dr. Yett: I'd be glad to. London Humane Society is currently killing every stray dog that vaguely looks like a pit bull. There have been hundreds die in London already. Because that's my local area, I know that. They will not adopt out any mixed-breed dog that is shorthair with a broad head, and I'm talking dogs that are not necessarily purebreds at all. I've seen some of the ones, and I would debate whether they are really pit bulls, but

they are so afraid of being sued for adopting out a dog that might attack somebody—mind you, any dog can bite; German shepherds are the number one. But they'll adopt out a German shepherd; pit bulls they kill. And there have already been hundreds die.

In other jurisdictions where these types of rules have been passed, people just abandon their pit bulls. You know, the young man, stud guy, who thinks a pit bull is testosterone-on-a-leash, and that's a common thing—these guys often don't have much money. These dogs are not vaccinated, they're not neutered—

The Chair: Thank you.

Dr. Yett: Do I have to quit?

The Chair: Yes, on this one. Mr. Miller.

Dr. Yett: So they dump them at the humane society, and they get killed. That's what I'm talking about.

Mr. Miller: Thank you very much for your presentation. I'll combine two questions in case the Chair cuts me off, as usual.

First of all, the point you made about the Minister of Agriculture, Mr. Steve Peters—he doesn't support this specific breed ban in this legislation? I'd like you to talk about that and how he came to that decision. Also, you mentioned that registering an ownership licence makes a lot of sense in terms of controlling dangerous-dog bites. I'd like your perspective on how the province should try to do some of the suggestions you're making. First of all, how did Mr. Peters come up with his decision not to support this?

Dr. Yett: Well, if you noticed what I said, I know Steve cares about the long-term well-being of society. He and I have talked about this issue and he is open-minded about it right now. I don't think he's made up his mind on the issue. But I know that his goal—and I'm assuming all of you have the same goal—is the long-term reduction—like that poor lady, the postal worker who was here today. It breaks your heart to hear things like that. Maybe you can't eliminate everything. You can't eliminate car accidents from drunk driving, but we've come a long way in reducing them. With education and enforcement, we can reduce dangerous-dog bites substantially in our society.

Mr. Miller: Do you have any suggestions for the province's role versus municipalities? We've heard about some good municipalities like Calgary, which has excellent bylaws and has greatly reduced dog bites. What do you see the provincial role as?

Dr. Yett: When I talk to municipal people, a lot of it is lack of money to hire someone to enforce this. Right now, you have to have your dog vaccinated against rabies to get a dog licence. That's never checked—ever. If I call up and tell the health department that I know there's a dog running around that doesn't have a rabies vaccination, they say, "Thank you," and they do nothing about it. They do not have the resources. The province can make rules and then dump them on the municipality—that's kind of a pattern—and if the municipality doesn't have the money to enforce it, it makes it difficult.

Mr. Kormos: Thank you, ma'am. It's an interesting point. Do you have an estimate—and I'm not talking about, from time to time, the feral dog that's out there on its own—as to how many or what percentage, however you want to put it forth, of dogs that have households are tagged-licensed? What's your estimate?

Dr. Yett: I think I've heard estimates of 40% in most municipalities. It's low.

Mr. Kormos: So six out of 10 aren't.

Dr. Yett: That's often the case, because there is no enforcement. The penalty is, like, non-existent. If you get caught, it costs you 20 bucks.

Mr. Kormos: That's at any given point in time? Because, in my understanding, a city might do a blitz, hire a bunch of students to sell dog licences this year but not next year.

Dr. Yett: I'm sure it varies from municipality to municipality, but that's right. And the consequences for not getting your dog licensed are minimal.

Mr. Kormos: What really throws me—we heard it from the woman here today, the postal worker, and we've heard it in other communities from other witnesses—is that we've got a Dog Owners' Liability Act—

Dr. Yett: Absolutely. It's not used.

Mr. Kormos: —that for instance provides for euthanizing a vicious dog and the authorities aren't enforcing it.

Dr. Yett: Yes, I agree. A lot of it is because it's a money issue and a public interest issue. Now, maybe with all this publicity, that will change a little bit.

Mr. Kormos: Down where I come from in Niagara region, I could have a hippopotamus in the backyard and if it's a Saturday afternoon my likelihood of getting an animal control officer out there is zip, zero, none, because they're on contract. The city can't afford to fund them. We haven't got effective animal control, and that's a reasonably sized municipality, not dissimilar to Brantford. Fair enough?

Dr. Yett: That's common throughout the province. It varies, but that's a common situation.

Mr. Kormos: Why aren't we looking at the real issues here?

The Chair: On that rhetorical note, thank you, and thank you for coming in today.

Dr. Yett: My pleasure. Thank you for listening.

BRANTFORD AND DISTRICT KENNEL AND OBEDIENCE CLUB

The Chair: Is there a representative from the Brantford and District Obedience and Kennel Club, please? Good morning. Thank you for coming in this morning.

Mr. Roland Alber: Just for the record, it's the Brantford and District Kennel and Obedience Club. Somehow "Kennel" and "Obedience" got reversed.

The Chair: OK, we'll interpose that. You have 15 minutes to speak with us this morning. You know the drill about dividing the time remaining. Please begin by identifying yourself for Hansard and kindly proceed.

Mr. Alber: My name is Roland Alber. I am a member of the Brantford and District Kennel and Obedience Club and also the show supervisor for the annual all-breed dog show which we hold, actually, in this very building. It takes up the entire building. This is the large grooming area. The arena is where we show the dogs. We have over 1,000 entries over three days, and this place is jammed cheek by jowl with people and their dogs and visitors.

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We do not have dogfights, we do not have bites, because every one of those owners and handlers has trained their dogs. Those dogs are obedient and do respond. It is something that just doesn't happen.

To give you a little bit of background on myself and to give you some idea where I'm coming from, I am also a breeder, exhibitor and trainer of a breed called a bearded collie which, for those of you who are not really into dogs, if you can think of Benji from the movie, something a little bigger than that, medium-sized, long-haired, a very friendly, fuzzy sort of dog.

One of our owners in Toronto a few years ago was in a park with some other dog owners. Many dog owners stand around and enjoy talking while their dogs exercise themselves far better than any of us can. Ellen noticed some folks sitting over there with a strange looking dog. Ellen's not very conversant with other breeds, so she went over and asked whether it was a nice dog, and the folks said yes. It was a pit bull. After walking back to the other owners and chatting, all of a sudden her dog Rufus was just screaming its lungs out. Fortunately, the pit bull had it by the rear leg rather than the throat and was flinging it around like a rag doll. It took all the other owners, plus the owner of the pit bull, hanging on to that dog and beating it on the head, for it to finally release Rufus—numerous stitches, hundreds and hundreds of dollars in veterinary bills later. The owner and the pit bull made off during this time. Several months later, this dog was the dog that attacked a young girl's face and disfigured her badly, and was put down, rightfully. Nonetheless, even with that sort of background experience, I am still opposed to a breed-specific ban.

My problem with it, obviously—well, I'll rephrase. Since I'm against it, I'm looking at the time and the dollars that are going to be wasted enacting and trying to legislate and enforce something about which I have some real doubts as to its effectiveness; time and dollars that could have been spent enacting good legislation which actually would reduce bites, so all the time that's going to be wasted if this bill is enacted, all the damage that will be done that could have been avoided if some more thought had been put into what I would consider better legislation.

One of my problems with this government in general, and the Lieutenant Governor specifically, appears to be the lack of expert advice being solicited prior to this. It would seem to me that not only was little or no expert advice solicited, but that expert advice which was proffered ahead of time was almost shoved aside. I hope to

God that other legislation which has a great deal of effect on people in this province is not treated in the same way but that expert advice is sought. I would hate to think that we have a government or a Lieutenant Governor with the attitude, "My mind is made up. Please don't confuse me with facts." That I find very bothersome.

Again, we're looking at the deed, not the breed. We can have dozens of Staffordshires or whatever sitting around here with their families. That's not what we're really opposed to. We're opposed to somebody being bitten. Let's deal with the act, the dangerous dog, the lack of training, the inappropriate owners of these dogs. Deal with the real issue: the deed, not the breed.

Forgive me if you're a friend of the Attorney General, but nonetheless, if this was in a human context, it would just be thrown out as racial stereotyping. If we decided, due to faulty statistics or statistics generated from God knows where, that people of a particular skin colour were more prone to sticking up convenience stores or shooting people at raves, and that we should take all those people and send them back to where they came from, you would be laughed out of court. If this were anything but dogs, it would not even get to this stage.

Look at the definition of "pit bull." If I look at the legislation, they have at least gone to the extent of naming certain breeds. I defy most of the people here, by the way, to look at a bunch of photographs and tell me which one of these breeds is shown in a specific picture. Then, as a catch-all at the end, "anything that kind of looks like this." It reminds me of that definition a few years ago when they were trying to enact legislation in the States on pornography: "We don't really know how to define it, but I know it when I see it." This is almost as silly: "It's what we say it is."

I feel very sorry for the people who will have to enforce this legislation. It's fine for the legislators to pass something of this sort and go their merry way, telling their constituents what a great job they've done for everybody, leaving this mess to be interpreted and enforced by law enforcement or by SPCA enforcement officers, and then going into the courts, for those owners who happen to have sufficient funds to defend their animals. All wasteful, ineffective consumption of time, money and energy that could have been used far more effectively in looking at the actual deed of dangerous dogs and dogs that bite.

Some of the articles in Bill 132 scare me. "Biting": there is no sort of qualitative or quantitative modification of that term. I hate to say this, but the majority, if not all, dog owners have been bitten by their dogs. This is something that occurs—

Mr. Kormos: More than once?

Mr. Alber: If you play with a dog, and you reach for the ball and the dog goes for the ball at the same time, you get bitten.

Mr. Kormos: That's once.

Mr. Alber: Am I going to shoot my dog because I went for the ball at the same time he did? No, you sit there and say, "Bad dog!" You deal with it, obviously.

You say, "That was as much my fault as it was the dog's fault." Are we looking at that as being the same as a vicious attack? There really doesn't seem to be much in the legislation to differentiate between those two.

The other one that scares me is "menacing behaviour." I say to myself, "What the devil is the definition of 'menacing behaviour'?" Is that up to the individual? Is that up to your neighbour who happens to dislike you? Is that up to some non-dog person to determine, or do we then send it off to those poor enforcement officers at the SPCA to again have to evaluate? Menacing behaviour? Dogs, by their very nature, tend to be territorial. A lot of people like having their dog bark at strangers so they know there are strangers coming to the door. Could that be considered menacing behaviour by some people? There seem to be a number of issues that have not been dealt with in Bill 132.

If you really want to get spooky—and I'm only throwing this out as wild speculation, but, my God, is this wonderful, civil-liberty-avoiding legislation: "We had to break into their house because somebody said the dog was menacing." Does this give carte blanche to some kind of abrogation of civil liberties and rights? I'd hate to think so, but certainly if you really want to speculate, it can get rather strange.

The other issue which is always of concern, and I have not heard it brought up here yet, is that in almost every legislation where you have breed-specific bans, the difficult part is getting that legislation enacted. Once it's enacted, the stroke of a pen adds another breed.

The Chair: Mr. Alber, you have about three minutes remaining.

1120

Mr. Alber: Fine. So it is a concern. Italy is down to—what?—64 breeds now, including corgis. The Queen can't go to Italy with her dogs. We're looking at the fear of everybody that this now opens the door to anti-dog people to continually just add breeds, long past the pit bulls.

I guess my hopeful solution to this is that one of the things to think about is graduated licences. We seem to have no trouble with it for cars. We can have a licence to drive a car. You need another licence to drive a truck. You have to have some training; the truck has to be inspected differently. For an 18-wheeler, you have to have a different type of licence, you have to have different training and that vehicle has to pass other inspections. Should we in effect decide that certain dogs, because of their potential for doing more damage than chihuahuas, require certified courses set up to meet certain standards by the government, how to train that dog? The dog has to be trained that way so that, at the end of it, we have certificates for different classes of dogs, their licences reflect that, and if people don't have that, then we fine the hell out of them. That is certainly another way to go at it.

I would like to say thank you all very much for the opportunity to present my views.

The Chair: Thank you very much, Mr. Alber. We've probably got time for one brief question.

Mr. Barrett: Thank you for the presentation on behalf of the kennel and obedience club. We have legislation here where first they come for the pit bull types and then, as you say, at the stroke of a pen we go on perhaps to Rottweilers or doxies that were of concern, say, 20 years ago; German shepherds—I think of the concerns there.

I'm not going to vote to kill off any type of dog myself, but I guess my question is, it looks like, the way things go, the McGuinty Liberals will pass this. They will eliminate these types of dogs. Where do we go from here? There's talk of a court challenge. I certainly receive many, many names on petitions. But where would organizations like yours go from here, given that this legislation will probably be rammed through?

Mr. Alber: Certainly, it is a concern because it is much easier to stop this, hopefully, than it is to repeal it. That becomes the problem. Now, on top of the ineffectiveness and inefficiency of this legislation in attempting to do what we all agree has to be done, which is protect the population from vicious dogs and irresponsible owners, we now have to spend some time trying to challenge this in the courts. I understand that Clayton Ruby has been retained by one of the groups to challenge much of this on constitutional grounds. I presume that's all we can do. We can certainly try and help our MPPs in coming up with more imaginative, more positive and more effective solutions and, hopefully, make some headway within the Liberal Party, or whatever government we're dealing with at the time, to possibly question their own approach to this and maybe modify it.

The Chair: Thank you for coming in today.

ANIMAL AIDE ASSOCIATION OF ST. THOMAS-ELGIN

The Chair: Is there a representative present of the Animal Aide Association of St. Thomas-Elgin? Thank you for joining us today.

Ms. Lois Jackson: Good morning.

The Chair: Good morning. If you've been here all morning, you get the general drift of it. You've got 15 minutes to speak with us. Any time remaining will be divided for questioning among the three parties. Begin by identifying yourself for Hansard, and please proceed.

Ms. Jackson: Mr. Chairman and members of the standing committee, my name is Lois Jackson. I'm chair of the board for Animal Aide Association of St. Thomas-Elgin. I'm also the volunteer specifically responsible for dog rescue and adoptions.

Just to give you a little bit of background, Animal Aide rescues, shelters, provides vet care for and places over 1,000 animals every year into new homes. We have a formal written agreement with the city of St. Thomas outlining this 10-year partnership. Amazingly enough, we have no paid staff; we're all volunteers. We operate a full-time rescue and adoption service. We are very well supported, raising over \$200,000 annually through donations in the community.

Animal Aide is not an activist group. We rarely become involved politically. Actually, we're just average people who volunteer our time, energy and talent to saving animals from pounds. We felt it important to share with you our concerns on the dog legislation that you are considering in Bill 132. Personally, as a matter of conscience, I had to come and speak to you for 10 minutes today to try and explain the collision course that we face after Bill 132. Today, I speak on behalf of those who cannot speak for themselves, who cannot vote, who cannot be here and who cannot write legislation.

I ask you to look at the impact of Bill 132, reconsider its contents, its consequences and how it may further entrench a culture of fear between dogs and humans. Although it focuses on pit bulls, which is not a breed, it targets and can affect all dogs. All dog owners in Ontario should be paying attention to this and not rest on their laurels that this is only about pit bulls and that other dog issues are not a focus.

Bill 132 and the shoot-from-the-hip remarks concerning dogs and public safety are an insult to dedicated people who, like myself, have worked tirelessly to improve the relationship between dogs and people in Ontario. The terms I hear too often hear are "good dogs," "bad dogs," "responsible owners" and "irresponsible owners." How very simplistic. I wish it was that uncomplicated.

If you don't care about dogs, if you don't own a dog, if you don't understand or are not a student of dog behaviour, if you do not work every single day with dogs of all breeds in a diversity of environments, how can you write legislation to improve dogs and public safety? I suggest the quick answer is that you cannot.

As a volunteer with Animal Aide, I work with dogs on death row. You may know death row better as "pound" or "shelter." Some dogs slated to die are strays that no owner has claimed in the short four days they are impounded. Some are dumped at the pound because they pooped on the floor, ate the furniture, the family is moving and they cannot take the dog, the divorce dictates the dog is no longer welcome, they don't have time for the dog anymore, they're having a baby, they have a new job, and I guess the saddest of all would be that the dog is old and sick and the people will not or cannot pay a vet to care for their dog.

I had a woman call me the other day. A vet had referred her to me. She had a 10-month-old male shepherd-husky mix, not neutered, tied outside the majority of the time because, she said, the dog preferred to be outside. She had two small children, ages one and two. When she was not looking—so she didn't see what happened—the dog nipped at one of the children. There was no mark and no injury. She thought the dog should be euthanized. When I suggested investing in her pet through more socializing, neutering the dog and taking the dog to puppy school, she saw no value in any of those suggestions. They didn't want the dog to be upset by being taken to the pound, so they chose not to take their dog to

the pound and they euthanized their 10-month-old dog because it was easier and it was safer.

What I need you to understand today is that in the great majority of times, the dog pays the ultimate price. There is no courtroom, there is no rush to justice, there is no appeal and there is no expert defence, always ending with the death penalty. If you saw what I see every day, you would be as ashamed and as horrified as I am. If the people of Ontario knew what I know, the public outcry in this province would shake it to the core. It is out of sight, therefore it's out of mind, and even you sitting here today may not even be aware of it.

Bill 132 is scapegoat legislation that's broadly languaged, predisposed to open-ended interpretation, retaliative in nature and biased. Short-leashing, muzzling without training, alienating, under-socializing and general mistrust of dogs is a surefire way to create more dangerous dogs and ill-informed owners than eliminating or minimizing them. There is a great lack of education and information already. The tone and direction of Bill 132 is not helpful in this regard.

1130

The breed "pit bull" does not exist and is generally used as a slang term. Bill 132 is a gigantic fishing net that unfairly entangles thousands of dogs, dogs that just happen to have a wide brow and a big smile. The wording "substantially similar" is outrageous and far too prone to abuse or misinterpretation. "Acts menacingly" is another example of where the bill is encapturing any and all possibilities and situations. But there is no mention of process, appeal measures and who is the expert making such claims.

Remember, Animal Aide, and specifically myself, deals with pound animals, the assumption being that these dogs are the worst of the worst, the throwaways, the bad dogs. They must be there for a reason. Yet I'm finding over the years that this is just not so. Animal Aide's success rate is 98% in safely placing dogs from the pound into loving and responsible homes, regardless of breed, age, temperament, health and age. Many of our most reliable and safe dogs are pit mixes or dogs with wide heads and big smiles. We also work with a trained canine behaviourist to help us in properly placing our dogs.

In successfully re-homing hundreds of dogs, we have yet to encounter a pattern of behaviour or threat in any particular breed, mix, or a certain-looking dog. We reject the conjecture that pit bulls—if there were to be such a breed—are all bad, are ticking time bombs, are inherently dangerous, or should be generally feared. This is simply not true.

My biggest sadness in coming to you today is the puppies. If this legislation passes with no amendments, puppies are the ones that will have no chance whatsoever. There is no way we can tell what breed or mix the puppies are for several weeks or maybe months. We had four puppies dumped in a snowbank two weeks ago. How can I tell what breed they are? How long do I wait to find out what breed they are? There is no way I can

tell. At what age do we put them down? Do I ship them out of Ontario, and to where? Will they be gassed like they're adults? Will they be shot? Will they be drowned? Will they have lethal injections? Please don't put Ontario in a position of having to kill puppies. It is unethical and wrong to even consider.

The Minister of Agriculture has the power to change and stop death row practices. The Minister of Agriculture has the power to stop the sale of live dogs and carcasses to research labs. The Attorney General has the ability and power to charge two-legged and four-legged criminals. The Attorney General has the responsibility to write legislation that is well-balanced and principled.

I ask you to revisit and discard Bill 132. At the very least, I ask that you set up a phase-in period so that puppies will not be killed. You have many, many people offering their resources and knowledge for constructive discussion. Please accept these offers made to you in good faith by experts and people, like myself, who care.

Animal Aide has received assurances in writing from the Attorney General via our local MPP's office that all pit-bull-type dogs—and I call them wide heads and smiling faces—will be available for our group to continue to rescue from the pounds, spay/neuter and adopt into good homes after Bill 132 is enacted. We hope this is accurate; in fact, we are counting on it.

Please reconsider this legislation and turn direction toward education, licensing requirements and more access to dog training and behavioural information.

Bill 132 simply creates and instills a culture of fear. Bill 132 puts people and dogs on a collision course. Simply put, it makes things worse.

I'd be pleased to answer any questions should you have some.

The Chair: We'll have time for about one quick question per caucus, beginning with Mr. Kormos.

Mr. Kormos: Thank you, Ms. Jackson. You've caused me to reflect on what I read in the paper. Apparently Brantford has just passed some bylaws creating a breed-specific ban and it's still very contentious. I'm not a member of the government caucus, but it made me think: If I were a member of the government caucus—my good friend Dave Levac, for instance, is in a community where he's going to be damned if he does, damned if he doesn't, because the community is split.

It seems to me one of the problems is that we don't have very much data about dog bites. I mean, it seems to me that I would be saying to the Premier in a caucus meeting, "Premier, look, let's get some data collection in process so we can get some scientific evidence," because if, at the end of the day, that data proves that a particular breed is inherently more dangerous than another, well, then we've got to live with that reality, but unless and until we have that data, it's knee-jerk, it's emotional, it's, as one observer up in Barrie the other day said, a climate of moral panic, and it isn't sound legislation.

So you've caused me to think: If I were a Liberal backbencher, in a caucus meeting, I'd probably be calling upon my Premier to just slow this whole process down

and accumulate some hard data, Ontario-made, because there isn't a single bit of data so far that supports breed-specific bans. The very anecdotal experiences: We've had people come forward to advocate for it, people who have been bitten, as they believe, by pit bulls. Interesting. You've caused me to reflect on that. Thank you.

The Chair: Mr. Zimmer.

Mr. Zimmer: You've touched on an important point, I think, and that is what happens to existing pit bulls under this legislation. I just want to pick up on what you said and remind you that, for existing pit bulls, there are three simple requirements or things that they're going to have to do—then people can keep their pit bulls or they can be put out for adoption or whatever—and that is, the pit bull has to be muzzled in public, it has to be leashed in public and the pit bull has to be neutered.

If any current owner of a pit bull wants to keep the pit bull, those are the three simple things that they're being asked to do: leash it in public, muzzle it in public and get it spayed or neutered. I gather from your comments that you think that's not an unreasonable thing to ask owners of existing pit bulls to do, should they want to keep them.

Ms. Jackson: I'm not sure where you read that in my presentation. Perhaps you're inferring that based on the fact that our organization does do training rehab work and spay/neuter programs. The message I was trying to get across to you is that we do not look at a dog as a breed-specific. We do that for all our dogs. So we expect all of our dogs that we rehab, rescue, spay/neuter and adopt into new homes—we often pay for obedience training. We always get them on Gentle Leader training if we have them in the kennel long enough to do that. So I'm not sure where you're going with that. This, to me, is a dog issue, not a pit bull issue.

Mr. Zimmer: Right, but that's what the legislation says: leash, muzzle and get it neutered, and you can keep it.

Ms. Jackson: But if the pound is euthanizing animals based on a tone set by the province or the municipality that a dog looks a certain way—that's where I was going with that—they don't have a chance.

Mr. Miller: I'll follow up on Mr. Zimmer. I think what he was getting at was your third-last paragraph, where you said, "Animal Aide has received assurances in writing from the Attorney General via our local MPP's office that all pit-bull-type dogs will be available for Animal Aide to continue to rescue, spay/neuter and adopt into new homes if Bill 132 is enacted."

My question to you would be, who is going to take those dogs, from your past experience, once this law is passed? You may be able to rescue them, but is anybody going to take them?

Ms. Jackson: I've been doing this for several years. I would say that I have had an increase—and I can't explain it; I wish I could—in adoption of our pit-bull-type dogs by extremely responsible people who, probably a year or two ago, were not looking to adopt that sort of dog. So they're not doing it to save the dog. They're not bleeding hearts or anything. We simply have had no

problem in adopting these animals into extremely good homes.

Mr. Miller: Once this law is passed and they have to muzzle and do other things, do you think you'll be able—

Ms. Jackson: I actually try to scare people by saying, "Do you know what the province is going to do? People are going to spit at you. They're going to tell you to get on the other side of the road. They're going to complain about your dog in the apartment. They're going to say it's barking, but in reality, it just has a wide face and a big smile." I try to scare them off, and once we've gone through the entire thing of what they have to do and what they may be looking at, they're still committed to the dog.

The Chair: Thank you for coming in this morning.

1140

GOLDEN HORSESHOE AMERICAN PIT BULL TERRIER CLUB

The Chair: Is there a representative present of the Golden Horseshoe American Pit Bull Terrier Club?

Good morning. Make yourself comfortable. You have 15 minutes to present to us today. If there's any time remaining, we'll divide it among the caucuses. Please begin by identifying yourself for Hansard, and the time is yours.

Ms. Sandra Alway: My name is Sandra Alway. I am president of the Golden Horseshoe American Pit Bull Terrier Club, the only American pit bull terrier club here in Ontario and one of only three clubs across Canada for the breed. I am also vice-president of the Dog Legislation Council of Canada and a member of the Banned Aid Coalition. I myself have almost half of my life invested in this breed, so I speak from experience.

I am also a proud citizen of Ontario who has been long concerned over breed-specific legislation and dog attacks. I follow dog attacks as closely as I can, and of course I think it's pretty obvious that when breed-specific laws are suggested targeting my breed of dog, I get quite involved in trying to get a real solution brought forth to the table.

The American pit bull terrier has been a recognized breed since 1898 in the US. Every one of the American pit bull terrier clubs sanctioned by the American Dog Breeders Association and the United Kennel Club has a mandate to uphold, as well as a code of ethics or constitutions and bylaws. Part of my club's mandate is to promote a more positive image of the breed and its owners. We do this through conformation shows and weight-pull contests. We attend the Toronto Sportsmen's Show to help inform the public about responsible ownership of this breed. I am very proud to say that we were very instrumental in bringing Toronto Animal Services' bite prevention program to the show. Yes, you heard me correctly: An American pit bull terrier club has been promoting bite prevention.

Over the last five months, my life has almost revolved around trying to bring a better solution to the Attorney

General's office. Of course, I wrote letters to him and received back the generic response late in December. But I also had a rare opportunity to speak with him directly on CH Live @ 12:30 on October 15 after his "banned, banned, banned" press conference. I believe that chance was worthwhile, as it gave me the ability to point out a few direct issues for me and my club personally, things like the purebred breeds named in Bill 132 no longer being able to participate in dog shows because of the spay/neuter requirement, and how aggressive dogs are dealt with at those dog shows. I truly have appreciated the time his staff has given me to point out some of the other less-thought-of issues with this bill. There are a few more that I will address in a moment.

I would also like to state on record yet again that I truly do applaud Michael Bryant for bringing the issue of dog bites to the forefront of today's conversation. Bill 132 has some excellent clauses in it. I and my club, like Donna Trempe, fully support some of these issues. Raising the maximum fine to \$10,000, jail time for truly negligent owners, better recourse for victims in adding the Provincial Offences Act, warning signs and mandatory spay/neuter for dogs that are deemed vicious are really great clauses, and we wish to see these left in the bill and expanded upon.

After listening to the hearings on the 24th and reading the hearings on the 27th in Hansard, it is bothering me more that victims—all victims—have a difficult time getting any recourse, to say the least. What the Trempe family had to go through is something no family should ever have to do. Losing a child is hard enough, but never getting vindication for that child is bound to be worse, especially when it resulted in the dog owner still not getting any punishment. The inquest recommendations that came out of Courtney's death were a prime opportunity for the party in power to take serious action against irresponsible owners and vicious dogs. They failed. Now it's in your hands; it's in the Liberals' hands.

If the province would only remove the breed-specific clauses of Bill 132, I believe I can safely say that not only would every expert stand fully behind a true dangerous dog act, but every responsible dog owner across the province would back it too. This is the Liberals' time to shine, to prove to the province and to the world that they will stand up for what is right, that they will protect every dog bite victim and do the right thing for the right reasons.

I'd like to mention a few more things that will directly affect the responsible owners of the proscribed breeds and the mixes out there that happen to fit the description.

One of my conversations with Minister Bryant's staff has assured me that I personally will hardly be affected by this legislation now. I have the great privilege of living on 50 acres, so my dogs are walked on my own land and therefore will not need to be leashed and muzzled for exercise. My dogs, however, will need to remain intact in order to continue competing in dog shows stateside. This staff member suggests that there will be exemptions for purebred dogs that are actively

competing in dog shows: again, another area that they claim will not affect me.

To continue my hobby of showing dogs, I have to cross the border multiple times a year. There is nothing in this proposed legislation to address crossing the border safely, without the risk of seizure for non-compliance both for Ontario residents as well as those travelling through. Toronto's airport is a major hub for flight transfers of those coming into and out of the country. Many dog fanciers actually ship or fly with their dogs and have to pass through or stop over in Toronto. These listed breeds and all the ones that fit the description will be at risk in simply coming near the province. The dogs will be considered contraband on entry, and between Canada Customs, Agriculture Canada and, oddly enough, CITES, they will have to sort out if the dog is a legal or illegal pet.

What is going to prevent a customs officer from confiscating my intact registered show dogs? What is going to prevent a customs officer from confiscating a traveller's pet simply because they are driving through Ontario on vacation, or vacationing here to see some of Ontario's natural wonders and tourist attractions? Further, what recourse do we, as responsible owners, have in those situations?

One of the other things we discussed was, no breeding allowed. In no way do I qualify myself as a breeder—I breed very seldom—but if you remove responsible breeding from the hands of the responsible, you will only end up with more irresponsible breeding. Irresponsible breeders are already a problem in every breed out there. These people do not license their dogs. They do not have a kennel licence. They do not, nor can they, register their dogs as purebreds. They do not care to whom the puppies are sold, as long as the cash is in hand. These people are a big part of the problem. Responsible breeders have contracts, breed first and foremost for themselves and to improve the quality of the breed and, most importantly, strictly adhere to acceptable breed temperaments and standards within their registries.

Reports suggest that the man who was severely mauled on August 28 in Toronto was the breeder of those two dogs. Is this the kind of person we'd like to see keeping dogs in secrecy, breeding them and then selling them to people in our communities? I know I don't. Furthermore, like anything that becomes prohibited, the price that these irresponsible breeders are charging will suddenly start going up, only to further their thinking: More puppies equal more money in pocket. The government will give them their own cash cow, so to speak, while completely extinguishing three breeds that trail back for over a century. Responsible breeders do not breed strictly for money, and more times than not they will actually lose money on a breeding.

Responsible breeders and owners will be the main target of this legislation, while the irresponsible ones will continue with their bad practices or even change breed, as was seen in Winnipeg. Responsible owners train, contain and socialize their dogs. They know their dogs'

idiosyncrasies and do not put them into a situation where someone may get harmed.

Before your eyes completely glaze over, yes, misidentification is going to be a problem. So I thought I'd pull out a quote that you may or may not have come across. A former Liberal Solicitor General, the Honourable Elizabeth "Joan" Smith, said in the Legislature on November 9, 1987: "We should be discussing vicious dogs, rather than pit bull terriers, as it becomes very difficult to prove in a court of law that a pit bull is necessarily a pit bull. A lot of time and energy could be wasted in a court as to whether it is a pit bull, so we prefer to address the matter of vicious dogs per se since it really does not matter which breed of dog commits a vicious act."

Just last month—actually, two months ago now; it was December—there was a severe attack in Florida from a "pit bull." Yet when a researcher for the National Canine Research Foundation investigated, she found the dog was clearly a heavier coated breed with looks similar to a husky or a German shepherd and the colouration of both those breeds. Are the province and our municipalities prepared for this extra expense? Isn't the breed of dog irrelevant in any attack? The owner's responsibility before the attack is what should be in question.

I will again direct you to Calgary's approach. You received these many months back, and I'm sure you've received them in the course of all these presentations. Their forward thinking has worked for them for many years. Why can't it work here? Bill Bruce has even offered to help set up and teach their approach to us here in Ontario. They have approximately 90,000 licensed dogs in their city, and only five dogs deemed vicious. That's five dogs—count 'em on one hand—deemed vicious. They are doing something right: zero tolerance for off-leash dogs and unlicensed dogs, and strict requirements and high fines for owners who have proved themselves incapable of being responsible dog owners.

The province must address the irresponsible behaviour of owners before a dog bites someone. Had Calgary's system been in place here in Ontario when young Courtney Trempe went to that neighbour's home, she could be alive today and in her first year of high school. Had that irresponsible owner been targeted after the dog's first bite, not its 16th, maybe that dog wouldn't have been alive by the time Courtney visited on that fateful day.

Follow-up on both of these issues is very important. We must hold irresponsible and negligent owners accountable for the actions of their dogs. In listening to the victims present on the 24th and again today, it has been clearly stated by all of them that the recourse available to them has been a challenge, to say the least. All victims must have real options available to them, and part of Bill 132 hopefully adds that option in the Provincial Offences Act. So many dog attacks don't even result in charges for a loose dog. Enforcement and mandatory issuing of fines under the Dog Owners' Liability Act and municipal bylaws are needed.

We need laws that protect the general public—our service workers, our police, our neighbours—from all dog bites. We need enforcement of those laws and stiffer penalties for those irresponsible owners who continue to ignore the needs of their communities. We need a law that would have protected Courtney and every other bite victim. We need Courtney's law. We need bite prevention in every school system at least every three years, targeted from grade 1 to grade 6. We need bite prevention programs in our communities and bite prevention tips in the media every time an article is printed on a dog attack. Why is it that the only time we see bite prevention tips listed is when it's bite prevention week?

Zero tolerance for unlicensed dogs, zero tolerance for off-leash dogs and owners who don't comply with municipal bylaws, high fines, strict requirements placed on owners and their dogs who do cause harm and damage, and tough enforcement that doesn't require police backup just to issue an off-leash fine: Sections of Bill 132 could be amended to include these things and to further protect the public's safety around dogs. Amend the Municipal Act of Ontario to include a clear definition of "vicious dog" for all townships to set a standard by, and to set fines across the province for things like dogs at large, nuisance dogs and biting dogs.

The Chair: Sandra, you have about three minutes remaining.

Ms. Alway: The last thing I'd like to address is the American pit bull terrier, a breed once known for its highly tolerant traits around people and its great love for people. It has been maligned almost beyond repair due to irresponsible owners and bad breeders, a breed that was never to be human aggressive. They live on in the Smithsonian as the most highly decorated animal of war. They continue in search and rescue work, police work, as therapy dogs and in family homes. Their mixes have been inducted in the Purina Hall of Fame for their heroic actions. The breed is known for its loyalty and stoic nature and for its general clown-like approach to life.

While the breed can be animal aggressive, human aggression and animal aggression are not the same thing. The breed was and is still strictly culled for human-aggressive tendencies. It is, simply put, not allowed by any responsible breeder or owner.

The ADBA and UKC have a no tolerance for human-aggressive dogs, especially at their hosted events, which can garner over 400 American pit bull terriers in one place with a very busy environment of dogs, kids and multiculturally diverse people, and which offer classes for kids to show their own dogs, even kids on a weight-pull track pulling their dogs. Any dog exhibiting signs of human aggression is immediately removed from the grounds, and the owner and dog's registered name are reported to the registry.

Each year American Dog Breeders' Association sanctioned clubs in Canada, the US and Europe hold over 90 conformation shows and weight pulls. In the last five years at these shows, they have had no incidents reported of canine aggression toward a person or inappropriate

human aggression toward a canine. In fact, that's one of our rules.

With a high intelligence level that makes them easily trained, they are ideal for a family setting with responsible owners and parents. Alas, I believe the best quality of the American pit bull terrier is also its worst in the wrong owner's hands. They will do anything to please their owner, and that owner takes this dog on the road of being loved or feared by its neighbours.

In conclusion, I ask you kindly to enforce the laws already on the books, create bite prevention programs accessible to all and amend Bill 132 into a law that leans toward Calgary's approach. Target unlicensed dogs and owners who allow their dogs to roam free, with strict enforcement and high fines associated with irresponsible dog ownership and tough requirements for those who violate our safety with their dogs.

I have received over 16,000 signatures on a petition asking for quality dangerous-dog laws that are not breed-specific. These people are the voices of Ontario, from the small towns to the big cities. They've asked for protection.

Set the standards for the country and the world to see. Take those great clauses in Bill 132—jail time, high fines, more recourse for victims, mandatory requirements and restrictions for all dogs deemed vicious—and expand on those ideals. I will gladly offer any assistance I can to help get these enacted. Responsible dog owners across the province all want to live in safe communities, just as bite victims—past, present and future—need to feel safe and protected. Turn Bill 132 into Courtney's law, and let's give everyone a better place to call home.

I am proud to live in Ontario. We proudly represent Ontario and Canada throughout the US every time we travel to a show. We're well known for our hospitality, our honesty and our dogs. How about giving us something to be really proud of: a place where dog attacks and irresponsible owners are not tolerated, instead of a place that I now want to leave. They say home is where the heart is. For dog owners, home is where the heart is, and our hearts are with our dogs. My home is the Niagara region, a foothill into Ontario, and my heart is with the American pit bull terrier.

The Chair: Thank you very much.

Applause.

The Chair: Ladies and gentlemen, it is not customary at hearings to show any form of recognition to the deputant, and I would ask you to respect that.

Unfortunately, there isn't time remaining for questions. That concludes our session this morning. This hearing is recessed until 1 o'clock.

The committee recessed from 1154 to 1258.

The Chair: Ladies and gentlemen, welcome back. This is the afternoon session of the standing committee on the Legislative Assembly on Bill 132.

Mr. Levac: On a point of order, Mr. Chair: First of all, as the member who represents this riding, I'd like to make just a quick comment to welcome my colleagues and thank them for visiting us here in the wonderful

riding of Brant and the beautiful city of Brantford. As Mr. Kormos noted earlier, we spared no expense and rolled out the red carpet in the front, as you see.

I would also like to bring thanks to the committee and the people behind the scenes who did the set-up and made this facility such a good place to have a hearing. I would also like to thank the staff of the civic centre and the city for putting on such a welcoming area, and also those who prepared the meal at lunchtime for us.

I'd like to thank all of those who have joined us in Brantford from afar. Welcome to the telephone city, home of many, many great people, including Wayne Gretzky and all those other wonderful names I could throw out at you and bore you with ad infinitum.

I would also like to thank those people who have made presentations on bringing this issue to the front of the Ontario Legislature. I thank each and every one of you for being here.

The Chair: I certainly echo your comments on the hard work done by the legislative staff, who always make these hearings look like they're very easy, when in fact there's a heck of a lot of prior work that's done in the background.

Is Allen Petten in the room, please? Allen Petten?

Mr. Kormos: On a point of order, Mr. Chair: Perhaps the parliamentary assistant could introduce the half dozen or so staff who are part of his entourage here today from the Ministry of the Attorney General and from his own office, both political and bureaucratic staff, so that everybody knows who these hard-working people are. There's about a half-million dollars a year in salaries sitting here.

The Chair: That's not a point of order.

Mr. Zimmer: I defer to the Chair on this.

KRYS PRICHARD

The Chair: We'll proceed with our second presentation of the afternoon, Mr. Krys Prichard, who is going to be joining us by teleconference from Ottawa. Mr. Prichard, can you hear us?

Ms. Krys Prichard: I can hear you, but it's Ms. Prichard.

The Chair: Oh, I'm sorry. It's one of those androgynous spellings. Pardon my error.

Ms. Prichard: That's OK.

The Chair: Krys, first of all, you're speaking to the standing committee on the Legislative Assembly. We're gathered here in Brantford for your presentation. We can obviously hear every word you're saying; we can't see you. You'll have 10 minutes to present to us today. You should begin by introducing yourself for the purposes of Hansard. The time is yours; please proceed at your wish.

Ms. Prichard: Thank you. Good afternoon, honourable members. My name is Krys Prichard. I am in Ottawa. I am involved with Trinity of Hope Dog Rescue. As well, I am a text analyst, and I'm going to be wearing my hat as a text analyst today, not as a dog rescue

volunteer. I would like to thank you for allowing me to share my concerns about Bill 132.

I'm going to start by saying that I am a dog-bite victim and that the dog that bit me is not one that would be covered under section 1. What started out as a level 3 dog bite escalated to a level 5 because of what I did in response. My mother stopped counting stitches at 250. That was before the top layer of my skin was reattached. One third of my scalp had to be reattached to my skull. An opiate-class narcotic was prescribed for the pain. I take exception that this bite would have been quantitatively less painful than one from a dog under section 1. The pain was very, very real, and the trauma was real.

Bill 132 would not have stopped me from being bitten, for it was a family dog that bit me, in the same way that it will not protect victims such as Tyrell Bayless, who was bitten by an 80-pound German shepherd, and others who have been harmed by dogs that would not fall under section 1. To say that our pain is less real is untrue; for the trauma and the pain, regardless of the breed that bites you, is very real, and protection of all victims should be of concern when writing legislation with respect to dangerous-dog laws.

I am, however, vehemently opposed to Bill 132, for I do not believe that it is going to address the issue of why dogs bite and what we can do to prevent dogs from biting.

1300

As a linguist, I have looked at the title of this bill first and would like to walk you through my concerns, if I may. To begin with, the title claims to be "An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and ... amendments to the Animals for Research Act." When I look at the words "an act to amend the DOLA," I have to rely on my understanding of what an amendment would be, which would be to change for the better by removing defects or faults; to change, correct or revise; to make minor changes. The original DOLA has a word count of 968 words. The proposed changes to this legislation result in a word count of 4,045 words, adding approximately 429% of text. This does not, from a linguistic perspective, qualify as an amendment but is, rather, a new bill and should not be introduced as an amendment to an existing bill, in my opinion.

One of the most obvious changes, when I look at the text and the title, is the change in the intended purpose. The original DOLA was to provide a means to compensate the victim, as well as a means for law officers to restrain and to seize or restrict a dog that has caused harm. The change to supposedly protecting the public, as the committee has heard, is based solely on anecdotal evidence. It is questionable whether Bill 132 would pass the Oakes test in that it has failed to establish a concrete link between the purported risk based on scientific evidence and the need to legislate the same to protect the public from that risk.

Public safety policy is generally based on incremental loss of life. If we use that with respect to the need to

increase public safety through this legislation, it would be difficult to prove that, based on the fact that one person dies in Ontario every 39 months as a result of a dog bite accident. Since most dog bites occur on private property, and since most dog bite fatalities also occur on private property, it is difficult to understand how public safety will increase. Indeed, following the passage of the DDA in Great Britain, Klaassen et al. did a study, two years before the passage of the bill and two years after, that indicated that dog bites did not go down following the passage of the legislation and that the purported claim that it would increase public safety was not founded.

If we look at the number of restricted breeds that live in Ontario, we have 160 American Staffordshire terriers and 660 Staffordshire bull terriers that are registered with the CKC living in Ontario, none of which have been responsible for either a fatality or an unprovoked incident involving a human. It's difficult to understand how 820 dogs pose such a great risk to public safety when, conservatively, there are 1.5 million dogs in Ontario. With relation to dogs, no scientific evidence has been introduced that supports this claim, and it certainly has not been introduced to support the claim that pit bulls, as they are defined under section 1, are responsible for a higher threat to public safety. If one were to accept that the American Staffordshire terrier and the Staffordshire bull terrier are pit bulls, the evidence speaks otherwise.

With respect to the amendments to the Animals for Research Act, the mere fact that there are provisions that allow for the transfer of these supposedly dangerous dogs to research facilities negates the claim that pit bulls and other dogs pose a threat to public safety, for dogs used for research must be able to establish a human bond, be well-socialized and be non-aggressive with members of their own species. In addition, the transfer to pet owners outside of the province negates the claim that these dogs pose a threat to public safety, for they cannot be pets elsewhere if they cannot be pets in Ontario.

The ethical concerns that I have include the two-tiered regulatory system, where one group of dogs and their owners are regulated based on behaviour and the other is based on physical type. I do not support that the change to purpose is required or that it has been well supported with scientific evidence, and would recommend the removal to preserve the intention of the DOLA.

Now I'm going to try and walk you through the argument from a linguistics perspective with respect to section 1 definitions.

1310

The Chair: Krys, you have about three minutes remaining.

Ms. Prichard: Thank you. With respect to definitions, the dogs classified under (a), (b), (c) and (d) are classified by their authority, which would be the CKC, as terriers. They do not fit on the collocation paradigm for being pit bulls. Historically, the definitions for (a) and (b) in your dictionary are going to point to the American Staffordshire terrier in that they are archaic terms that have been retired and are no longer in current use to

describe the breed. It is difficult to understand how "pit bull" could have an extension for terms that were current before the term "pit bull," when "pit bull" is not defined in any dictionary.

I would recommend that the committee oppose Bill 132 based on the information that others have presented and recommend that the Attorney General withdraw it, returning to the drafting process of trying to draft a generic dangerous-dogs act that would cover all dogs and not just a class of dogs that cannot be defined. Thank you.

The Chair: Thank you very much. We would have time for perhaps one short question from Mr. Zimmer.

Mr. Zimmer: No questions.

The Chair: No questions? OK, Krys, thank you for joining us today.

VIVIAN SINGER-FERRIS

The Chair: Mr. Allen Petten? Is Allen Petten in the house? No. Vivian Singer-Ferris?

Vivian, come on up. Welcome this afternoon.

Ms. Vivian Singer-Ferris: Hello.

The Chair: You've got 10 minutes to discuss your point with us today. If you leave any time remaining, then the time will be divided among the three caucuses and they'll have the opportunity to ask you a question, if they wish. Please begin by identifying yourself for Hansard, and proceed.

Ms. Singer-Ferris: Hello, everyone. I'm Vivian Singer-Ferris. I'm executive director of two wildlife facilities, the Tiger Foundation and the Kerwood Wolf Education Centre. We house Siberian tigers, four well-functioning wolf packs and various other wild species, including a cougar. My background is journalism with a degree from Ryerson, and I've worked as an investigative journalist and as an editor.

As a long-time owner of pit-bull-type dogs, I was dismayed to read Michael Bryant's comments in the Toronto Star where he likened pit bulls to "dangerous" wolves. This was just one example of Mr. Bryant's misunderstanding of not only animals but the real issues at stake, the crux of the problem. Never in the entire history of North America has a healthy, wild, unhabituated wolf ever attacked and killed a human. Wolves are genetically predetermined to be timid and shy, to never view humans as prey. Properly raised, managed and socialized pit bulls never attack humans or other dogs. Human- and animal-focused aggression in pit bulls is a learned behaviour. It is a human problem, not a genetic predisposition of the breed. Genetically, in fact, pit bulls are indistinguishable from other dogs.

I'm absolutely appalled that such ridiculous and extreme measures have been introduced into the Legislature. Michael Bryant has latched on to the usual publicity whenever a pit bull attack occurs. He has failed to adequately investigate dog bite statistics and to comprehensively research dog behaviour and genetics overall.

Mr. Bryant has failed the province because he has failed to do his homework.

Drawing on the evidence of researchers and genuine canine experts, the Supreme Court in Alabama overturned breed-specific laws which had banned pit bulls, ruling that there is no genetic evidence that one breed of dog is more dangerous than another simply because of its breed. The problem of dangerous dogs is really one of dangerous owners: backyard breeders, inexperienced, poorly educated and irresponsible owners and also, of course, in the case of pit bulls, illegal dogfighters.

I've submitted a video with my materials. It's prepared by Dr. C.W. Meisterfeld, who is the first canine psychoanalyst to be certified as an expert witness by the US courts. Since 1963, his training philosophy has saved the lives of thousands of problem dogs, including aggressive biters of all breeds. He's the author of four books about relationships and dog training. His video, *The Unique Nature of Man's Best Friend: Rehabilitated Pit Bulls*, destroys the myth that pit bulls are born highly dangerous killing machines. Using pit bulls trained for fighting that he rescued from a shelter, he documents these dogs' reprogramming into non-aggressive pets, pets that are able to interact safely with children and unfamiliar animals. If danger was a matter of genetics, these pit bulls could not have been cured.

The pit bull controversy is not new. In 1987, I wrote a feature investigative story, "Battle Scarred: Unleashing The Pit Bull Controversy," for *Humane Viewpoint* magazine. That story is within my written submission as well. I spoke with numerous canine experts, animal welfare organizations, pit bull owners and even interviewed a dogfighter who allowed me a glimpse into the clandestine world of one of the most brutal sports known to man. Even after meeting numerous fighting dogs, I was convinced these animals are born innocent and moulded into what they'd become by man.

I currently share my home with three pit-bull-type dogs, Buster, Brewster and Bosco. These dogs are among the most gentle animals I have ever known, living and interacting safely with numerous children and other animals of various species, including our one-and-three-quarter-pound chihuahua, Olivia. I don't know how well you can see this, but there is a smaller copy of this in my submission as well. This is Bosco, our pit bull pup, with Kabonga, a Siberian tiger cub. They're seven and six weeks old in this picture. For those of you who perhaps can't see the caption very well, it states, "Hey, I'm not a Dangerous Beast ... Honest!"

Can pit bulls, dogs that have been domesticated for countless centuries, be considered dangerous beasts, a descriptor more usually applied to wild species? What's the difference? The key is the difference between tame and socialized. Our facility's tigers, wolves, coyotes and cougar are wild animals, hand-raised, socialized and trained from birth, but they are not tame. True tameness comes only with domestication of a species. In the case of dogs, except in rare instances not even connected to breed, tameness comes with an important trait: sub-

servience, an inbred desire to obey and even please humans, their masters. Even pit bulls trained for fighting respect and obey the very human referee in the middle of the ring.

As I've already said, and the video will make clear, even dog-directed aggression in pit bulls is largely a learned behaviour. Pit bulls are, by nature, no more aggressive to other dogs than, say, any medium- or large-breed dog would be to members of their own species. Many medium-sized or larger dogs of all breeds do not get along well with small dogs they were not raised and socialized with. The keys to safety are education and proper management.

In looking to control the dangerous beast, I believe the McGuinty government should, in addition to enacting non-breed-specific dangerous dog laws, take a good, hard look at the management of wild species in this province. Yes, the MNR is very commendably in the midst of developing tougher policies concerning their licensing of indigenous wildlife at zoos and similar facilities, but for exotics, Ontario has no regulations or regulatory body in place. Tigers, lions and cougars live behind flimsy game fencing or in otherwise poorly constructed pens at severely under-par roadside menageries. Properly contained and managed, these animals would pose no real threat to public safety. Right now, however, at numerous facilities these are your true dangerous beasts.

1320

The Chair: Vivian, you have about three minutes.

Ms. Singer-Ferris: OK. Thank you. My wolf centre's education programs focus on presenting wolves, one of North America's top predators, in a very realistic light. We speak about wolves' family-oriented lifestyles, their innate timidity and shyness of humans; we do all we can to dispel the myth about the big bad wolf. But in getting beyond that myth, we also educate about pack structure, wolves' natural and highly tuned predatory instincts and intense hierarchical behaviour within packs. Our message, then, is not that wolves are good; it is that wolves are not inherently bad.

I urge this government to take an equally liberal, realistic look at pit bulls and similar dogs caught up in this bill. I urge a very liberal approach wherein an entire breed and similar dogs are not banned within Ontario, but rather where well-cared-for and properly socialized and managed dogs are allowed to live in peace, responsible owners are not punished, and irresponsible owners and illegal dogfighters are punished to the full extent of the law.

I fully support strict and enforceable dangerous-dog laws, laws that do not unfairly discriminate against any breed and do not punish responsible dog owners. Please consider dangerous-dog laws that are not breed-specific, ones that are much more effective in their scope and capacity to protect the public.

Thank you.

The Chair: Thank you very much. We have time for one short question.

Mrs. Munro: Thank you very much for coming here today and bringing a different kind of perspective on this issue. I of course agree with you with regard to the need for dangerous-dog legislation and have brought forward a private member's bill to deal with that. But I wanted to ask you, because much of our discussion here, particularly for the government, has focused on the nature-versus-nurture argument: Given your own professional background, I wonder, from the comments you've made here, if you would be able to provide further insight into that issue and how it affects the kind of situation we find ourselves in, in looking at this particular piece of legislation.

Ms. Singer-Ferris: OK. Specifically, what is your question? I could probably speak for an hour on that issue.

Mrs. Munro: The government has raised the issue about the uniqueness of a particular breed and tried to attach to that specific issues around the nature of the dogs that are identified in this breed. Obviously, in your experience, it would seem that you would support the notion that nurture is obviously the key part that we're talking about here.

Ms. Singer-Ferris: Yes; it's the very key part.

The Chair: Thank you for coming in today.

Ms. Singer-Ferris: You're welcome.

CITY OF KITCHENER

The Chair: Is there a representative here of the corporation of the city of Kitchener?

Gentlemen, welcome. Make yourselves comfortable. You'll have 15 minutes to talk with us today. If you choose not to use your entire time, it'll be divided among the parties to ask you some questions. Please begin by identifying yourselves for the purposes of Hansard. The time is yours. Proceed as you wish.

Mr. Berry Vrbanovic: Thank you, Chair Delaney. I'm Councillor Berry Vrbanovic from the city of Kitchener.

Mr. Jake Smola: My name is Jake Smola. I'm a regional councillor representing the city of Kitchener.

Mr. Vrbanovic: Chair Delaney, let me begin by thanking you and the committee for this opportunity to attend today and address the committee on what we believe is a very important issue.

It was a little more than eight years ago when Councillor Smola and I last addressed a committee of the Legislative Assembly of Ontario. Then, it was the standing committee on regulations and private bills, when we were seeking the legislative authority for Ontario's first pit bull ban.

It's a pleasure to be here today to share with you the history of Kitchener and Waterloo's experience with banning pit bulls. This afternoon, you will also hear from representatives of the city's legal services department and its animal control service provider about the operational aspects of our bylaw and comments on the proposed legislation.

Many will argue for and against the merits of a pit bull ban. Today we would like to focus that argument. In our view, this is all about a public safety issue, plain and simple. Public safety is a responsibility of all three orders of government, and specifically when it comes to dogs, that responsibility lies with the provincial and municipal governments. We believe that the actions taken by Minister Bryant were done for the same single reason that we pushed for a pit bull ban in our communities: to save residents of our respective jurisdictions from the disproportionately large exposure to public danger presented from this particular breed of dogs, and for that we say thank you. It has been long overdue.

To help put Kitchener's experience into context and give you some of our historical perspective, I now turn to my colleague Councillor Jake Smola.

Mr. Smola: Thank you for the opportunity to attend today and to share with you some of our perspectives on what we believe is a very important issue for the well-being of Ontarians.

In 1996, we came to the province to request special legislation to ban pit bulls in Kitchener and Waterloo. Our request was in response to a rash of very serious pit bull attacks in our region. As you know, our request was granted. The result in the years since then has been a dramatic drop in pit bull attacks. In 1996 we had 18 pit bull incidents. After the ban, there has been about one per year.

In short, since we have banned pit bulls, families are safer, and that is what this is all about. Parents do not have to live in fear that they, their pets, and especially their children are in danger of an unprovoked, vicious and possibly even deadly attack from a pit bull.

A ban on pit bulls has worked in Kitchener and Waterloo, and that is why we are here to express our support for this bill, extending a ban on pit bulls province-wide. We believe that every citizen in every city and town across Ontario deserves the same level of safety that we have in Kitchener and Waterloo.

As Councillor Vrbanovic mentioned, in 1996 we appeared before the standing committee on regulations and private bills to request consideration of a private member's bill. At the time, the Municipal Act gave municipalities the authority to regulate and prohibit all animals except cats and dogs. We asked for the legislation in order to extend our authority to dogs, in order to deal with our very serious problem with pit bulls. We asked for it to respond to the significant constituent outcry in our community, saying such legislation was long overdue. In terms of that problem, let me share with you details of just some of the serious incidents we were faced with.

The intense level of activity with pit bulls in Kitchener-Waterloo began in January 1996, with a dramatic incident that occurred over some 20 kilometres in Kitchener's east side. The incident began in an industrial part of the city's Stanley Park area, with the dog travelling over 10 kilometres to the Chicopee area, where it attacked and ultimately killed a Labrador-husky-

shepherd dog in its owner's backyard. This incident occurred within 300 metres of two elementary schools. With the police in chase now, this dangerous animal travelled back toward its starting point, passing by two schools again and forcing the students to be detained within their schools during recess for their safety. The dog was finally surrounded on a four-lane arterial road, where it was hit by several vehicles and fired at 15 times, with three shots bouncing off its head before it finally fell to its death.

On August 7, 1996, a pit bull belonging to a friend of the family attacked the three-year-old son of that homeowner. The incident was probably the most tragic to an individual, requiring 40 stitches to the young boy's face.

The third example I will use relates to a victim impact statement from Michael and Patricia Mooney, residents of the city of Kitchener and owners at that time of a purebred Saluki named Yasmin, which was severely injured as a result of "an unanticipated and unprovoked attack by a female pit bull" while being walked on a leash by an employee of a local animal hospital. I would ask Councillor Vrbanovic to pass some photos around of Yasmin, as I read from the victim impact statement.

1330

"The employee was walking Yasmin on the back lot of the hospital when suddenly from out of nowhere a pit bull terrier runs up and attacks Yasmin. The pit bull grabs Yasmin by the throat and tears her whole throat open, exposing her jugular vein and her esophagus. The pit bull's jaws locked closed around Yasmin's throat and it takes three adults to pull the pit bull off of Yasmin. Upon our arrival at the animal hospital, our very first impression of Yasmin is that she looks like a pound of raw ground beef. My wife gasped and immediately began to cry, as I did.

"After having surgery on two separate occasions and numerous checkups, Yasmin has been characterized as a full recovery, despite some heavy scarring. We have noticed that since the attack, Yasmin is less confident and much more tentative with people and unfamiliar situations. Whereas before Yasmin always greeted other dogs with her tail wagging and without reservation, she now either cowers if we are out for a walk, or if she is inside the house and sees a dog, she snarls and barks aggressively. Yasmin is very much a changed dog as a result of this attack.

"My wife and I are set to have our first child around Christmastime. We are left to wonder how Yasmin will behave with the infant. Will she be gentle and loving, as she has always been, or will we have to watch her closely for signs of aggressiveness? Only time will tell. If Yasmin is anything other than gentle and loving, I know that my wife and I will both attribute it to this incident."

That finishes the quote from the victim impact statement.

When this issue was debated back in 1996, much of the debate at the time, on the committee and in the public, was similar to some of the arguments we are hearing today. There was concern about addressing a

specific breed as opposed to dealing with behaviour, and some were uncomfortable with euthanizing dogs.

As a father, as a former city councillor and now as a regional councillor, I argued then and I argue today that we cannot wait any longer for another attack, the disfigurement of another child or the death of another family pet.

The bylaw had broad public support at the time, and it still does today.

I believe that today the results speak for themselves. In 1996, 18 families were harmed and traumatized by pit bull attacks to people and animals. Today, that is down to one per year. The ban has worked, and the people of Kitchener-Waterloo are safer because of it.

I'd now like to give the floor back to Councillor Berry Vrbanovic, who will speak more specifically to the legislation before us.

Mr. Vrbanovic: I'd like to direct the next phase of our presentation specifically to the legislation as proposed by Minister Bryant.

One of the strongest elements in the bill, in my opinion, is the increased fines. Owners face fines of up to \$10,000, double the current act, and six months in jail. Corporations and puppy mills face fines of up to \$60,000. This sends a strong message that irresponsible owners will be held accountable for vicious dogs. I know that the committee has heard many disturbing stories from victims of pit bull attacks. The penalties in the bill reflect the seriousness of this issue. Pit bulls maim, disfigure and traumatize their victims. These attacks simply cannot be tolerated in our communities. The penalties in the bill show that the government is serious about holding owners accountable.

Another reason that we support the bill is that it will avoid a patchwork of bans created by individual municipalities. In 1996, Kitchener and Waterloo joined together on our ban, in order to ensure that a resolution on either side of the residential street that divides our cities wouldn't create a problem for the adjoining city.

As I mentioned before, we believe that every citizen in the province deserves the same level of safety that we have come to have. At the same time, we appreciate that the bill respects municipalities' authority under the Municipal Act. I was pleased to see that the draft legislation specifically states that a provision of a municipal bylaw will prevail if it is more restrictive than the provincial legislation. This will be important in Kitchener and Waterloo.

Here are some of the measures that have worked in Kitchener as we implemented our bylaw. Like the province, we included grandfathering provisions to ensure that people who already have pit bulls were able to keep them, but also like the province, we put strong controls in place to lower the risk that dogs presented in the community; grandfathered pit bulls were called "restricted dogs" and the poundkeeper imposed a number of controls:

On the owner's property, the pit bull must be either inside the house or in an enclosed pen or fence; off the

owner's property, it must be muzzled or on a leash. If there are children under 14 years of age in the house, the dog must be caged, penned or under the control of someone at least 16; if the dog is off the property, it must be under the control of someone who is at least 16.

We require a sign on the residence indicating that there is a pit bull inside. This is very important information for emergency personnel who come to the house and for visitors, such as salespeople or canvassers.

We also put a number of tracking mechanisms in place. All pit bulls must be microchipped. If the dog is taken to a new address or sold, the owner has an obligation to report that, and if the dog dies, the humane society must be notified so that it is removed from our registry.

Finally, all pit bulls must be sterilized. If the dog has a litter, it has to be reported and turned over for euthanization.

I urge you to implement these regulations as part of the legislation, particularly the requirement for signage on the homes of pit bull owners. Our emergency service providers—EMS, fire and police personnel—all deserve to have the knowledge of the danger they may be walking into.

I understand that one of the concerns raised by some surrounds the definition of the pit bull. In our case, we have been successful with that, utilizing the professional expertise of our animal services provider, the vets, and others on our dog designation committee. I understand that some have suggested to you that this process has not worked. This is simply not true.

Having said that, one difference we want to draw to your attention is that the proposed definition of "pit bull" is quite different than the city's definition. In particular, the province's definition would include purebred Staffordshire bull terriers and purebred American staff terriers, which are excluded from our definition. We excluded these breeds based on the public and professional input we received prior to the implementation of our bylaw. We were convinced that as long as these dogs were purebred and registered by the CKC or the AKC, the likelihood was that the risks were significantly reduced, and as such they merited this consideration.

The Chair: Councillor Vrbanovic, you have a little more than two minutes.

Mr. Vrbanovic: OK. Thank you.

We believe that, ideally, the province's definition should be consistent with the definition in our bylaw. That definition, which excludes purebreds, has worked for Kitchener and Waterloo. It is clear and enforceable, and at the same time it has been effective in virtually eliminating pit bull attacks. And it is proven.

Having said that, for Kitchener and Waterloo, the discrepancy between the definitions could have caused us a dilemma. We are appreciative that the province has written this legislation so that the more restrictive definition will apply. This is important, as we also don't wish to become a haven for certain breeds. If you choose not to amend the legislation, we will accept the provincial

designation so as to be consistent with the rest of the province.

We also still have questions about enforcement provisions in the draft legislation. It is unclear who will be responsible for enforcement of the act and who will cover the costs. I'll leave that to our delegation later this afternoon, who will address those issues further.

In conclusion, despite what others tell you, we can tell you from first-hand experience that pit bull bans work. In Kitchener and Waterloo, the safety of citizens has been significantly improved by the implementation of this ban.

While we have some questions about the definition and about how the ban will be enforced, we strongly and unequivocally support the province's proposed legislation. This is an issue of public safety, pure and simple. We have seen too many examples of pit bulls which are a time bomb waiting to go off. We have seen case after case of unprovoked, unpredictable and vicious attacks, and they need to stop.

The residents of cities and towns across Ontario deserve the same level of safety that we enjoy in Kitchener and Waterloo. Residents that you represent deserve to know that you have stood up to the naysayers and have ensured that their public safety is paramount to you. It's the right thing to do.

Thank you very much for hearing our presentation today. We would be pleased to answer any questions.

The Chair: Thank you. We have time for just one question, and that would go to Mr. Kormos.

Mr. Kormos: No, thank you, Chair.

On a point of order, Mr. Chair: I'm just interested—and I appreciate your comments. You made reference to a subsequent delegation. The corporation of the city of Kitchener has two slots today? I see that on the agenda. I find that unusual, in view of the fact that there are any number of people who wanted to make submissions—

The Chair: The process by which the deputants were selected was approved by our subcommittee, and it's not a point of order.

Mr. Kormos: The subcommittee didn't approve the same corporation having two submissions. I don't know the specifics of—

The Chair: Do we have a question from the government side?

Mr. Kormos: Very strange.

Mr. John Milloy (Kitchener Centre): Thank you very much, to the delegation from Kitchener, for coming in from my riding. I really appreciate it.

I just wondered if you want to take a second to reflect on the debates—I'm not sure if they were in 1996, leading into 1997, or around 1997. You pointed out at the beginning that you did hear a lot of the same arguments that we've heard. This is obviously a very emotional and passionate issue. I'm just wondering if you could reflect for a few minutes on the experience in Kitchener. Obviously, as a resident of Kitchener I know there is a fair amount of popular support for this. So just sort of the chronology of how it played out and how it was

demonstrated that this in fact wasn't as onerous as people may have feared.

The Chair: You'll have to do it very quickly as well.

Mr. Vrbanovic: Absolutely. The reality is that when we undertook this, we obviously went through a significant public consultation process. There were many public meetings where citizens came and attended and voiced their concerns. We amended the bylaw, ultimately, what came to the House for consideration, in light of some of those issues.

The reality is that over time we've shown that it does work, that the world hasn't come to an end in terms of implementing the bylaw; it's been able to be done effectively. We know that the numbers of dogs are being dealt with. I think that at the end of the day the message to the province is that, properly implemented—and I think you're well along in the right direction toward that—this legislation will have the same effect province-wide that we've seen in the city of Kitchener.

The Chair: Thank you for coming in today. Is Mike Martin in the room, please?

Interruption.

The Chair: Mike Martin, this is your deputation. Please sit down.

Interruption.

The Chair: Madam, you're out of order. Please sit down.

Interruption.

The Chair: Please come to order.

Mr. Martin, welcome to the committee this afternoon.

Interruption.

The Chair: Madam, please take your seat.

Interruption.

The Chair: Well, I'm not.

Mr. Martin, this is your time before us. You have—

Interruption.

The Chair: Madam, please sit down.

Mr. McMeekin: Mr. Chair, I move that we recess.

The Chair: This committee will recess until 1:50.

The committee recessed from 1341 to 1350.

The Chair: Ladies and gentlemen, let's reconvene, please. Mr. Martin?

Interruption.

The Chair: Madam, this is not the first organization that has had multiple presentations after consultation with legislative research. Please sit down or be escorted out.

Interruption.

The Chair: Madam, you are out of order. Sit down. Mr. Martin?

Interruption.

The Chair: Madam, please sit down.

Interruption.

The Chair: No. Please sit down.

Interruption.

The Chair: Madam, if you choose to disrupt the meeting, I'd be delighted to call it now, and we'll adjourn for the day. I'm sure Mr. Martin has come, along with the others, to make his presentation here. One of the things this committee has enjoyed while it's gone on its tour has

been goodwill and a certain amount of good humour on the part of everybody. We've managed to hear from everyone, and in this case, like many other deputants, the city of Kitchener has two deputations. The process by which the deputants were chosen was agreed upon by the three parties and followed to the letter. Please sit down.

Mr. Martin, it is your time. Welcome to the committee.

Interruption.

The Chair: Well, I'm sorry if you have, but the process by which the deputants were chosen—

Interruption.

The Chair: You've had your chance to make your deputation. Please sit down.

MIKE MARTIN

The Chair: Our next deputant is Mr. Mike Martin. Mr. Martin, welcome to the committee. I apologize for the short delay.

Mr. Mike Martin: No problem. If it would even things out, I wouldn't mind taking one of the empty afternoon slots—

The Chair: Well, this is your time now.

Mr. Martin: —maybe two of them.

The Chair: Mr. Martin, you have 10 minutes to make your deputation before us today.

Mr. Martin: Start the clock. If it's not a problem, could I get a three-minute warning, if you don't mind?

The Chair: I'd be delighted.

Mr. Martin: Thank you very much.

The Chair: Please begin by introducing yourself. The floor is yours.

Mr. Martin: My name is Mike Martin. I'm a dog owner from Hamilton. That's pretty much my dog credentials. Actually, the dog pictured on the screen is my dog. I've got a lot to say, but I don't have much time, so I'm going to skip most of what's in your package and kind of go in backwards order. Sorry for that, guys and women.

If the technology will support me, I'll switch to the next page. This is my dog, Sidney. I'm going to tell you a little bit about her story and why it's important to us; this is all down to identifying pit bulls. It's sort of my real-life, "Can you identify them or not?"

Bill 132, the pit bull ban: Most people read it as that. It is a pit bull ban. If you don't have a pit bull, it doesn't affect you and you don't have to worry about it. Well, that's not really true, especially if you don't know if you have a pit bull, and I'm in that category.

I got Sidney from the SPCA. She's been through a lot of professionals through that process. I'm going to go through them and show you what they gave me as paperwork. I've got to figure out if this girl is a pit bull or not.

I originally saw her on the SPCA Scarborough Web site. They referred to her as an Akita. That picture is an Akita. That's not my dog—it has similarities. But the professionals there told me she was an Akita. When I got

there, I took her out on a trial adoption. When I did that, they gave me this piece of paperwork where they listed her breed as an AmStaff/Akita, so she's a cross. At the top-right corner there, you'll see a picture of an AmStaff and a picture of an Akita. She's supposedly a mixture of those two now. You'll notice under "Remarks" that they also called her a bull terrier, which is the third dog in the right-hand column. This is the SPCA in both cases—the same people, the same professionals.

I adopted her. They sent her to their vet, and their vet gave me this back. This is her health record with that vet. It's hard to read, but it says "Australian shepherd." There's a picture of an Australian shepherd, a completely unrelated dog. Again, this is a vet. This is a professional. This is the type of person who is going to be identifying these breeds in your law.

Mr. Kormos: Mr. Zimmer, this could be identity theft.

Mr. Martin: It could be.

This one is really dark, but you can see it in the handout: We got her microchipped by the same vet, and they submitted the paperwork to PETNET. It reads, "American Staff/cattle dog." In the right-hand column, you will see a Staff and a cattle dog. I guess that's what she's a cross of. Reality-wise, she really does look a lot like a cattle dog; I'll give them that. This is the same guy who said Australian shepherd, though.

Following her spaying, I had to take her to an emergency vet—there were some complications—a midnight vet in Mississauga. They're great people there. They listed her breed as "pit." I think we can all assume that means pit bull.

A follow-up visit to my own vet, the vet I use, who has taken care of her for the last few years: This is her paperwork there. They have her listed as a Staffordshire bull terrier. There it is on the right-hand side, "Staffordshire bull terrier"—a different dog again. I only own one dog. All these pieces of paperwork were created within the first month that I owned her.

Mr. McMeekin: You're up to six now.

Mr. Martin: Actually, it's seven. I'll show you on the next page; I summarize them all. There are actually seven different breed descriptions of her, and this is by only four groups of professionals. I'm not trying to put down the vets and the professionals. They have as much training in identifying breeds as your home doctor has in identifying ethnic background. You wouldn't go to your doctor and ask him if you're Chinese. Why are you going to a vet to ask them this? Clearly, they can't answer the question very well.

So here we go. The Web site says she's an Akita. That's not covered by your ban. So she's good there; I don't have to worry. On the SPCA agreement—the same people—the first line says she's an AmStaff/Akita. AmStaff is covered by your ban; Akita is not. It isn't clear what the ban does about mixes. Maybe it's that last clause; I'm not really sure. Maybe she's banned there. They also said she's a bull terrier. That's not included in your ban, so she's good there; that's another breed.

Australian shepherd is not included in your ban; it's not even related. There's no history between those. PETNET: American Staff. That's covered by your ban; cattle dog is not. It's a cross. Does that count? I don't know. That's a maybe. The Mississauga Veterinary Emergency Clinic: "pit." OK, a pit bull. She's banned. I've got that one; that's pretty clear. Iroquois Ridge Veterinary Hospital: Staffordshire bull terrier. OK, that one I can give you. That's included; that is banned.

In the first month that I owned my dog, it went to four professionals and I have seven professional opinions. Three say I don't need to worry about the ban, two say they don't know if the ban covers me and two say that I have to worry. I don't know what that means.

I've been doing my own research, so I sort of know what's going on here. I've got to assume that she's going to be included, because the penalty for not doing the right thing means that she's killed, and she's my pet. That would not be a good thing. If I were to assume that she's not included, like three of the seven opinions and possibly two additional ones say, then as I'm walking her down the street calmly at my side on a loose leash, like I always do, animal control can stop and say, "Hey, that looks like a pit bull and it's not wearing a muzzle. It's not conforming, so I'm going to take it from you." Now I have to prove in court—and I don't know which piece of paper I should bring—that she is not a pit bull. If they judge against me, that maybe she is—she's got a pretty broad head—then it's a mandatory death sentence for my dog.

1400

She hasn't done anything. Her background is questionable, through the professionals. I have no right to appeal once she is defined as a pit bull; that's not an option. There's no judgment made on her actions—what she does, what she's like—or me. I'm going to assume she's included. I'm not going to try to fight a death sentence for my dog; that's not fair to her. So now she has to wear a muzzle everywhere we go, which means chasing sticks is out of the question. I can't exercise her anywhere, because I'm going to assume that I can't take her off her leash in a leash-free park as I'm sure she'd be assumed to be a pit bull and taken—another death sentence. So I can no longer exercise her. Her enjoyment of life is not what it used to be.

The Chair: Three-minute warning.

Mr. Martin: Now, that's me. I'm involved in this. How many people out there have dogs and say, "My dog's not a pit bull, so I'm not even worried about it." They haven't once looked at it, and you're going to stop them on the street and have their dogs put down. This is not right.

I've got a lot more material here. I'm going to skip through it all. You guys can read it. You've seen most of it anyway.

To summarize all of this, this is what I want you guys to do; this is my plea. You've seen all the expert opinions, so I don't know how you could do anything but oppose the breed-specific portion of this bill. Anything

else just doesn't make sense, so I'm assuming you're going to do that. I would also be so bold as to say that when you give your recommendations, I would like you to outlaw breed-specific laws in the province. I want you to force the municipalities to address the real issue. I want you to prevent ineffective laws and knee-jerk reactions, prevent killing innocent dogs, stop ignoring aggressiveness in all the other breeds that have it and enforce responsible dog ownership.

That's all I have.

The Chair: We have time for one brief question. Mr. Zimmer?

Mr. Zimmer: No, thank you.

The Chair: Ms. Munro?

Mrs. Munro: I would just like to congratulate you for bringing forward your position in a way that demonstrates to all of us a real face on the issue of breed identification. You've done it in a humorous way, but in a very real way, and I think it's most important that you were able to present that to this committee. I want to commend you for doing that. Thank you.

Mr. Martin: You're welcome. I tried to introduce some humour, but understand that, below this—

Mrs. Munro: It's serious.

Mr. Martin: —is a very serious concern for the life of one of my family members.

Mrs. Munro: Absolutely.

The Chair: Mr. Martin, thank you very much for coming in today and for your very interesting presentation.

JENNIFER PRESTON

The Chair: Is Robert Preston in the room?

Welcome to the committee this afternoon, sir. You have 10 minutes to address us. Please begin by stating your names clearly for the purposes of Hansard, and the floor is yours.

Ms. Jennifer Preston: I'd like to introduce myself. My name is Jennifer Preston and this is my husband, Robert Preston. I'm speaking on behalf of our family: my nine-year-old son, Kyle, and most importantly, all of our dogs and our friends. All of us have a very strong love for the American pit bull terrier and are very much against breed legislation.

We live in Wilsonville, Ontario, which is just outside Brantford, on a four-acre farm where we have 12 American pit bull terriers, starting off with Meggie, Tigger, Scrappy, Keyara, Ty, Jinx, Nakita, Jewels, Sierce, LoLa, Molly and Ace, and one St. Bernard named Tequila. All of our dogs range from eight months old to 10 years old. All of our American pit bull terriers are registered through the American Dog Breeders Association in Salt Lake City, Utah. They are also shown in dog shows through the ADBA that take place all over the United States, as well some parts of Canada, such as British Columbia and Alberta. We also know around 75 other American pit bull terriers through many of our friends,

who all bring their dogs out to our home on a regular basis.

All of our 13 dogs run loose on our property, with electric fencing, every day together as they play. They play well and get along with other dogs brought to our home, and outside of our home. Our dogs also interact with other animals, as we have a cat and our neighbours have horses. Our dogs interact with children on a regular basis, as my son has many friends over, as well as all my nieces and nephews. We also have many adults over and I've never had one complaint about my dogs, not even from Superior Propane, which fills up my gas tank every two weeks; not from the water man or the meter man. As far as they're concerned, as my dogs are running loose as they pull into my laneway, they think my dogs are great. They pet them every time they come.

So this is what brings me here today, to be the voice for all of my loving dogs. I understand why we are here today, but all of you may not. It all comes down to irresponsible people. Many of you may agree with me and many of you may not. I hope, in all fairness, that you have an open mind and listen to what I have to say.

Many professional people are very much against breed legislation, as it does not work, such as the Ontario Veterinary Medical Association, the Canadian Veterinary Medical Association, all humane societies across Canada and many more associations. The list just goes on. For example, in Winnipeg, where they have banned the American pit bull terrier, studies show that it has not solved any dangerous-dog problems. Since the ban was imposed in 1990, there have been 85 different breeds that have bitten and 94 mixed breeds that have bitten. Therefore, banning is not the answer, because you will have the same irresponsible people buying other dogs and the dog bites will still be happening. If a dog is purchased and raised as a guard dog, that's what it will do. If a dog is purchased and raised as a pet, with love and care, no one would ever have any problems. All of our dogs are raised as pets and interact well with other animals and people. I have never had a problem. You can't tell me that I'm just lucky.

There are many breeds that have bitten over the last couple of months, and most get blamed on the pit bull by the media, who honestly know nothing. For example, the dog in Cambridge that attacked the paper boy was said to be a pit bull, but in fact it was later determined by the SPCA that it was part whippet terrier and part Dalmatian—no relation whatsoever.

Also, you never hear about the other breeds when they attack, like the three German shepherds and the vicious Rottweiler in the Brantford SPCA, as we speak, under quarantine. From my son's point of view, he was a victim when he witnessed someone's German shepherd rip apart a cat and all her kittens. He then said to me, "Mom, why do they want to ban our dogs? Our dogs aren't like that. They should ban German shepherds." So now you have a nine-year-old state that we should ban all dogs that do things wrong.

If you add up all the irresponsible people who buy these dogs and don't register them or take them to a vet for checkups, I highly doubt they are going to spend time with a dog to teach it and to love it. For all those people, it is just a show-off thing: "Look at my dog and how mean I can look." It is people like that we need to control.

There are many other options to control dog bites and attacks. As the saying goes, "Punish the deed, not the breed," which I'm sure you've heard many times. There are many options that can make a difference if people are willing to compromise. Here are some of my suggestions:

(1) Identify dangerous dogs based on their behaviour, not by their appearance and not by their breed.

(2) Make it mandatory to take your dog to obedience if it falls under the dangerous-dog list before being able to purchase a licence. That way, if the dog shows aggression, it can be dealt with then.

(3) Make it mandatory for any dog that falls under the dangerous-dog list to be fixed unless they are used as show dogs.

(4) Enforce dog tags on all breeds, as more than half the dog population is not registered.

(5) Make it mandatory for all registered breeders to microchip all puppies before being sold. Then, if there is a problem, you can also go back to the breeder and see if the dogs were properly bred and sold to responsible people, not just young kids.

1410

There are so many things to consider in all of this. I totally understand and my heart goes out to people who have been bitten by our breed of dogs. I can't express enough to you that a dog only does what it knows or what it is taught, or not taught, for that matter. All breeds of dogs bite or have bitten someone, so why is just our breed getting punished for every breed?

The Chair: Just to let you know, you have about three minutes.

Ms. Preston: Thank you.

Is that fair to all the people who have been bitten by other breeds? No, it is not.

I also don't understand how the government plans on paying for what it is going to cost to enforce everything if it is passed. If you cannot control now half the people who own dogs who don't buy dog tags, how are you going to enforce this ban? This brings me to, who is going to enforce this? How are they going to enforce this? How are they going to determine that a pit bull is actually a pit bull or a pit-bull-type dog when a part whippet and part Dalmatian can be classified as a pit bull?

This brings me to another point: euthanizing innocent animals. These animals have done nothing wrong. Most of the animals in humane societies all across Ontario are innocent. All of this could possibly lead to euthanizing them.

I am asking on behalf of all of my dogs and all other pit bulls out there that you think deeply about what you ought to do, as it will be on your conscience forever. As well, you should know that if we can come to a com-

promise, you get a lot further and make everyone happy, so we can still love the dogs we choose.

To finish, I would just like to read you a poem from a pit bull. It's called "Pit Bulls Don't Cry."

I see the children in the lane.

They look like friends, we'll have a game.

They've got a stick, oh boy, what fun.

They'll throw it for me and I'll run.

But someone stops me. I wonder why their mother screams, "Don't go near those

"Horrid dogs. Come here, come close.

"They're dangerous. I'll tell you why.

"They bite little children and they die."

All I can do is watch and sigh

Cause now I know that pit bulls don't cry.

Mum cuddles me up and says, "My pet,

"We love you dearly so don't you fret."

But I love everyone out there.

Why can't they love me? I do care.

I wish they weren't made to pass me by.

I'm a pit bull. I don't cry.

I sit behind my padlocked gate

From early morn till quite late.

When I go out, it's on a lead.

Is mine the only heart to bleed?

I'm held in check as the world goes by.

I wish the pit bull heart could cry.

There are some dogs, and also men

Who cannot tell a foe from a friend.

So all of you must bear the blame

Expected to live a life of shame

Condemned, alas, and we know not why.

All we know is we will not cry!

Mr. Levac: On a point of order, Mr. Chair: I wonder if we could get a copy of Ms. Preston's deputation so we can take it for study? I'd appreciate it, if that's possible.

The Chair: If you would supply a copy of your deputation to the clerk, it will be copied for the committee.

Ms. Preston: That's fine.

The Chair: Thank you again for taking the time to come in. That pretty much fills up your time, so unfortunately there is no time for questions for you today.

DOGWATCH.NET

The Chair: Dogwatch: Is Julie King in the audience? Welcome this afternoon.

Ms. Julie King: Thank you. I'm glad to be here. Would you let me know two minutes before the end of my presentation, in case I'm running a bit slow?

The Chair: Sure, no problem. You've got 15 minutes to speak with us today. If you leave any time remaining, we will divide the time for questions. Start off by identifying yourself for Hansard. The time is yours. Proceed as you wish.

Ms. King: My name is Julie King and I represent Dogwatch.net. We strongly oppose breed-specific legislation and we are here today to ask you to support

dangerous-dog legislation that applies equally to all breeds.

The Courtney Trempe inquest report contained 36 recommendations to improve public safety through the prevention of dog-related attacks and fatalities. To date, only 10 of those have been implemented, leaving 26 actions unturned, unaddressed, that could reduce serious dog attacks.

I'd like to maybe surprise you and congratulate the government on taking measures to improve public safety around dogs. However, I believe there is a better approach than what currently stands on the table. There are good things in Bill 132, things that we support, but I think the evidence has been overwhelming at these hearings.

I'm really pleased I've come. I've learned so much from so many experts on dogs, and when I started this process I knew a lot about dogs. I am so impressed with the evidence. We need to have education, but we also need to have legislation that is going to work for Ontario.

In my observations today I have a few things I've noted. There are no data to support breed-specific legislation. All the dog experts who have spoken in these hearings have made that clear. They've also shared a common message, that they oppose breed-specific legislation, but that they want stronger dog laws using a Calgary-style approach. Those who support the ban, and we have heard from people who favour the ban, seem to share a common message as well: that they believe that pit bulls—and I use that term loosely because there is no such thing as a pit bull, and from Mr. Martin's presentation it became clear that identification is a huge problem—should be banned, because of their personal experiences and because of what they have read in the media. That's what I would like to address.

Last fall, during the same week that an attack on a chihuahua made headline news in the national papers, the national headlines did not cover the murder of a 70-year-old Peterborough man who was beaten to death in broad daylight by high school students. What was he trying to do? What was his offence? He was trying to get down the alleyway to his home.

Last fall, many dog-bite stories were either minimized or not covered when the breed involved was not a pit bull, and the victims in some cases required extensive stitching like the victims whose statements we've heard. For example, the Chesapeake Bay retriever attack on a young boy in London, Ontario, that required stitches to the boy's face and neck: not covered. The coonhound attack in Sault Ste. Marie that put a victim out of work for a week: not covered. The vicious mauling of a postal worker by a Rottweiler in Orillia: That received minimal media coverage because it happened at the height of the discussions of Bill 132. The attack on a child in Sudbury by a black Lab on October 28: minimal coverage. The mauling of a young child by a chocolate Lab on December 27, which required treatment at two different hospitals: That received minimal coverage.

Why were the pit bull attacks making national headlines when attacks of equal or even greater severity by other breeds were not? The journalists I put this question to explained that when a pit bull bites, it's news, but not necessarily other breeds. No one, they told me, wanted to hear about an attack from a family dog. I wanted to gain some academic perspective on this because I'm a science-type person, so I called up Suanne Kelman, the interim chair of the Ryerson School of Journalism, and put the question to her, why is this making news? What makes news news? "News," she explained, "happens when a story is novel and it offsets the public good." She went on to explain that when the public believes there is a pattern, the story that fits that pattern is news. If it does not fit the pattern, even though it could be a very similar story, it's not considered to be newsworthy.

In other words, if the public believes that pit bulls are inherently dangerous dogs, then the media will report attacks by this type of dog while not necessarily viewing the attack by the Chesapeake Bay retriever as being newsworthy. The logic is circular but its effect is very powerful. The news confirms our perceptions and fears. Clearly, this is a vicious cycle. The paradigm, once established, is difficult to change.

If our society believes pit bulls to be more dangerous than other dogs, it seems that we are also more likely to label biting dogs as pit bulls, whether or not that label applies. There have been several examples of this kind of misidentification. The media reported that an American Staffordshire terrier attacked a newspaper boy in Cambridge. A few weeks later, this identification was corrected by the Cambridge Humane Society. The dog was actually a mutt, a mongrel with likely four or five different breeds in its heritage. The letter from the humane society is in the appendix of the presentation. But only Citytv corrected the breed misidentification. The Toronto Sun ran a story, "Pit Bull Swallows Boy's Ear." As it turns out, I spoke to the animal control officer who had that dog, and she said, "Well, it's definitely a mixed breed." Was it perhaps really an Australian shepherd, as we saw from Mr. Martin's presentation? In the Legislature, the Attorney General attributed a mauling in St. Catharines to a pit bull when the dog was actually a German shepherd, and that boy was in a coma, a very serious victim. In January 2005, we had the report of an attack by three pit bulls in Ottawa, Ontario. They turned out to be bull mastiffs. Toward the end of January, a police report identified two dogs in a severe attack as "pit bull type" dogs. This is the police identifying the dogs. Later, they changed the definition on one of those dogs to a German shepherd. Now, how does someone confuse a German shepherd with a pit bull?

1420

What's more, we've heard the question raised, are pit bull attacks qualitatively different? I think we've heard from victims like Krys Prichard, who received 250-plus-plus stitches, that no, they are not. But if those pit bull attacks were qualitatively different, why is it so hard for the media to distinguish between the pit bull attack

and the bull mastiff attack, and even the German shepherd attacks?

When you contrast the media reports with the actual data, three important things emerge:

(1) Media reports are both over-inclusive and under-inclusive. This is not a new problem. It's just that pit bulls happen to be the current dog of choice in their sights.

(2) Public animal control officers, police officers, veterinarians and journalists are not particularly good at identifying dogs by breed, yet they identify dogs by breed all the time.

(3) When a dog bites or attacks, if it has a short coat, muscular body and blocky head, it's going to be labelled a pit bull regardless of what's actually in its makeup.

In contrast to the public perception of these dogs, we have some Canadian data, and that data says that pit bulls are responsible for less than 5% of serious bites—the OVMA quoted that on the first day of the hearings—and are responsible for less than 4% of all fatalities in this country. You can get that from Karen Delise's data. Now, if we wanted to do something about dangerous dogs, why is this government not looking at huskies, which are responsible for 39% of all such fatalities in this country? I don't want the government to look at any breeds, but it certainly raises the question if this is about public safety.

The point is, preconceived notions are very difficult to displace, and for that, I think we have to take a minute to look at ownership factors. Ontario's urban centres do seem to have a problem with a small number of aggressive and grossly negligent dog owners. Please note that I say "urban" very purposefully, because rural communities have different dog problems. Now, I've asked many of the people I know living in Toronto, professional colleagues, about their perception of pit-bull-type dogs, and in almost every case the people living in the GTA started linking their intimidation not to the dogs but to the people. I heard about men with tattoos and big moustaches and gold chains.

Mr. Kormos: Anybody with goatees?

Ms. King: I'll have to check. Then they started talking about how they were intimidated. I asked them, "If those were Rottweilers, German shepherds, Dobermans, would you be less intimidated?" They said, "You know, I never thought about it like that. No, I wouldn't be less intimidated." It's those people who are wearing their dogs like jewellery who are creating a large part of the public perception problem.

Would Bill 132 stop these people? Would it stop the drug dealers, for that matter, maybe let us go into their homes, using the dogs as an excuse so that you can get at the drug stash? No. These people who are breaking the laws now, that's not going to change, and the Winnipeg model proves this. Even if they don't keep their pit bulls, the Winnipeg data show that they will go to other breeds. There was a 450% increase in Rottweiler bites in one year in Winnipeg after the ban. They'll pick breeds like

Dobermans, Rottweilers, German shepherds, mastiffs, and any other crossbreed that you can imagine.

So when you talk to the experts and look at the data, it becomes clear that the owners and the backyard breeders are the problem, and that these people will simply switch to new breeds if this law passes. This is why places like Italy currently have 98 breeds on their list.

More importantly, I want to ask in particular the party in power, are you ready to penalize 98% of responsible dog owners to go after people and a people problem just because right now they like the kind of dog that's similar to the dog that I like and that thousands and thousands of responsible Ontarians like? Are you willing to do that to go after the 2%? I would think that what has probably surprised this government the most in these hearings is how many "white-collar" families actually own and love these dogs as pets. I'm talking about doctors, lawyers, musicians, teachers, scientists, business owners—everyday, normal family folk who love their kids and act intelligently and responsibly. In fact, if you check the Hansard for December 22, 1987, you'll see that even Ontario's current Premier, Dalton McGuinty, had a pit bull terrier as a child.

Now, there are a couple of quick points—I'm sure I'm getting close to the end of my time—that I would like to bring to your attention.

(1) A breed ban was not an election promise. This was not on the election platform and it never came up during the campaign. There were attacks in 2004, but no more than in other years. There is no verification, in fact, that many of the dogs in these attacks were pit bulls. If this Liberal government is ready to pass legislation based on urban myths, that's pretty disturbing. But I have faith in you. I have faith that this breed ban is coming out, because you have shown a very courageous action in holding these public hearings.

The Chair: You have just about two and a half minutes left.

Ms. King: OK.

(2) The problem, and why we're here today, is that the Attorney General asked the wrong question. Instead of asking the public, "Are pit bulls a breed apart?" he needed to ask, "What is the most effective way to stop serious dog attacks?"

(3) The Winnipeg data are grossly distorted. It is shameful how Winnipeg has been fed to the media as a success case. The Winnipeg data clearly show that bites by all other breeds went up significantly after its 1990 ban. Bites by Rottweilers rose by 450% in a single year, and the city only saw a significant reduction in its serious dog bites and dog bites after it increased staffing and enforcement. That didn't happen for another 12 years: 2002.

(4) What about these 6,000 e-mails that were used to justify the ban? I'm an Internet professional. The fact that the Attorney General is also the minister responsible for democratic renewal has been overlooked in this debate. Bill 132 seems to have been a test case for how the government could get more input from the public through

the use of e-mail. However, several things have been very disturbing. The Toronto Star reported that Michael Bryant's top aide was soliciting signatures for the on-line pro-ban petition. That same petition was started by a member of the Young Liberals, Milton Chan, who has worked for several government ministries. Thirteen people in a row from different cities and ethnic backgrounds submitted identical comments to the pro-ban petition, in two different places. Was a proportion of those comments being generated by computer software that hit a glitch? What does this indicate about the 6,000 e-mails, especially since the minister had stated that he got thousands upon thousands of e-mails from people who wanted to keep their dogs?

If you need one reason—just one—to drop the breed ban in favour of dangerous-dog legislation, it is this: Victims like Courtney Trempe, James Waddell, Ashton Ebinger, and all the other potential victims in this province deserve equal protection from dangerous dogs. The responsible owners deserve protection as well. The public will support you if you stand up for all the victims, and not just the victims of pit bull attacks.

In closing, I urge you to drop the breed-ban portion of Bill 132 and to take the additional steps recommended by experts related to microchipping, education, and enforcement of the laws we have. Look to Calgary. The world's best model is in our country, and it's in Calgary.

Applause.

The Chair: Thank you very much for your deputation today. I remind those who are joining us that it is not the practice within our committee to recognize deputants during our hearings. Thank you, Julie, for coming in.

ALEXANDRA SOLTAN

The Chair: Is Alexandra Soltan here, please? Alexandra, welcome this afternoon. You have 10 minutes to speak with us. Please begin by identifying yourself for the purposes of Hansard. If there's any time remaining, it will be divided among the parties for questions. Please proceed.

Dr. Alexandra Soltan: My name is Dr. Alexandra Soltan. I am a veterinarian from London, Ontario. Thank you for giving me the opportunity to speak to the committee and all who have come here today.

I have over 22 years of involvement with dog training and dog behaviour. I have come here to speak because I believe the Liberals' proposed Bill 132 will not keep the residents of Ontario safe from aggressive dog attacks. It will not decrease the number of attacks presently occurring, but it most certainly will condemn many, many good dogs to death and it will penalize responsible owners.

As a veterinarian, I feel a great responsibility to keep animals safe and healthy, and at the same time protect the community. I do not believe that Bill 132, as written, will do that. We need enforceable dangerous-dog legislation, but the breed of dog does not matter, as many speakers before me have outlined clearly.

1430

I feel for those people who have been victims of dog attacks. It must clearly be a living nightmare for them. Many of those attacks could be prevented by enforcing the leash laws we already have, implementing mandatory spay/neuter for all pet dogs and providing education about responsible dog ownership and responsible dog breeding.

I have had many years of involvement in dog behaviour and training on both a personal and a professional level. I assess dogs' temperaments on a daily basis as I perform my duties as a veterinarian. Dogs have taught me much. Dogs are incredible animals—all dogs, regardless of breed or breed type.

This afternoon, I would like to discuss the bull breeds in the veterinary setting, the problem with identification of breeds and types of dogs, the role of responsible dog ownership to decrease any negative interactions with the public and my personal passion—competitive dog sports.

I have been a veterinarian for 12 years. I have received one bite in all of those 12 years of practice. I have seen many different breeds and types of dogs in the sometimes stressful veterinary clinic environment. I have never once been threatened by a bull breed or bull breed type—not once. If Attorney General Michael Bryant's hypothesis that pit bulls are a breed apart and are inherently dangerous were true, you would think I would see that in my daily work; in fact, it is the opposite. The quiet and gentle demeanour of the bull breeds has in fact endeared them to me. In the large veterinary practice where I work, we have thousands of animals on file. I know of three registered Staffordshire bull terriers—two are owned by the same person—one registered American pit bull terrier and no registered American Staffordshire terriers.

A few dozen puppies a year are registered across the country for those three breeds. They are not any part of the dangerous-dog population that face us today. I see many dogs that would fit the definition of pit bull in this legislation. Most are random-bred dogs without papers, but they are owned by good, caring people and are cherished family pets. This legislation will be a great burden for these people and their dogs. Responsible owners who keep their pets on leash, have them spayed/neutered and have trained them should not be penalized because of the actions of irresponsible owners.

I would like to address the very real problems with breed and breed-type identification. Other speakers have clearly outlined the fact that the pit bull is not a breed and, therefore, has no breed standard and cannot be clearly identified. I have great concern over how it will be determined that a dog fits the definition of "pit bull" as outlined in this proposed legislation. Many dogs do not have registration papers, have come from unknown backgrounds, are rescued or adopted from shelters and their parentage may be known or unknown.

I find it incredible that a dog's physical appearance will be used to predict its behaviour. This makes no sense to me. I have included photos of a dog in my handouts. This dog is a 70-pound brindle and white, shorthaired,

muscular dog with a large head. This dog is not a pit bull, but there is no way to prove this. This legislation could assume that he is one and could change his life forever. This dog's behaviour is exemplary. He is well socialized to people and animals. He is kind toward children. He is well trained, vaccinated, licensed and neutered. He is an active participant in agility trials, disc dog trials and dog demonstrations for the public, and has multiple dog sport titles, which are included in the handouts, as well as his Canine Good Neighbour certificate as issued by the Canadian Kennel Club. He is a random-bred mixed breed, a cross between a boxer and a Labrador retriever. But wherever this dog goes, he is assumed to be a pit bull. If he was in a shelter, under this proposed legislation he would not be adopted out. He would be euthanized or used in animal research, and that would be a great shame.

This dog happens to be my dog. His name is Badger and he loves life. He loves people and loves to play dog sports. There are thousands of dogs just like him that will die if this proposed legislation is passed. In fact, many have died already. The deaths are occurring. Their deaths will be the responsibility of the Ontario Liberal government. Killing healthy, adoptable dogs is not something I wish to be a part of. Their faces would haunt me. It goes against every moral fibre of my being.

Since Michael Bryant's press conference on October 15, 2004, I have received a number of negative comments about my dog Badger when we have been in public. Badger has been a part of my family for over three years now and these comments have only come since the announcement of the proposed ban. This does not make me feel safe. In fact, I find these comments very threatening.

Badger is a good dog. He is a kind and gentle dog. His physical appearance alone does not determine his temperament, and this is true for any dog of any breed or breed type. Badger has done nothing wrong. He has a responsible owner—me. As a responsible owner, I feel I should have less restrictions placed on me as a dog owner, not more restrictions. I have done everything I can to ensure that my dogs are welcome members of my community. I place a very high value on the benefits of training and socialization.

If the Ontario Liberal government's goal was to draft good, enforceable, aggressive dog legislation to protect the public, why did they not conduct these public hearings prior to drafting this legislation? I do not believe experts were consulted. If they had been, we would not be here today. We would have that good legislation and the public would be safer.

There is not one major dog organization that supports breed-specific legislation. How did Michael Bryant come up with this legislation? I have seen so many facts and statistics that have shown BSL will not work. I would like to see what facts and statistics the Attorney General used to draft this legislation. Show me your experts.

It has been mentioned that Calgary has a pretty impressive record when it comes to dog licensing and aggressive dog controls. Since this system has been

proven to work, should we not look at that? Should we not look at all the places where BSL has been tried and has failed?

The Chair: Alexandra, you have about three minutes.

Ms Soltan: Thanks.

I have been active in competitive dog sports for over 20 years. All of my dogs have participated in different dog sports, from obedience, conformation, dog sledding and agility to disc dog competitions. It is my passion and I thank my dogs for indulging me in these activities. Much of my free time is spent with my dogs at agility trials, both here in Ontario and in the United States. It is a large part of my life. I refuse to attend events in Kitchener-Waterloo because of their restrictions, including last year's regional agility championships. I stayed home with my dogs. Everybody else got to play.

This legislation will not allow certain dogs to continue in these dog sports. It is impossible to catch a Frisbee or wow the crowd in an agility competition with a muzzle on. These dogs are highly trained. They are among the most socialized of all dogs. The public loves to watch dogs—all dogs—have fun. Badger brings a smile to everyone's face when he competes. This legislation will effectively stop some dogs from having the opportunity to participate in these activities. I would ask that the breed-specific parts of this legislation be dropped so that all dogs can participate freely in these events.

As I sit here today speaking to you, I will conclude by stressing a number of my greatest concerns.

I hope the Ontario Liberal government thinks about everything that has been presented before them during these meetings and rewrites this legislation. There are many people, myself included, who are offering to help in the writing of good, enforceable, aggressive dog legislation that is not breed-specific. Use these resources in a way that will help keep Ontario citizens safe from aggressive dogs, regardless of breed or breed type.

Look at the programs that have worked in other areas: education for dog owners and breeders, mandatory spay/neuter of all pet dogs. Enforce existing leash laws, and reward owners who vaccinate, license, microchip, spay/neuter, socialize and train their dogs.

Please realize that breed identification will be next to impossible for mixed-breed, unregistered dogs. Many dogs will be condemned to death based solely on their physical appearance. Please keep Badger's pictures in your mind.

Remember that the registered purebreds such as the Staffordshire bull terrier, the American Staffordshire terrier and the American pit bull terrier are not the dogs involved in these dog attacks. These registered dogs are few in number in this province and are generally owned by breed fanciers who care deeply for their chosen breed.

Please do not prevent me and my friends with bull breeds from participating in training classes and dog sport competitions. I have spent years training my dogs to work with me in these endeavours and to be welcome members of the community. Please do not punish me

because of the way my dog looks and not the way he acts.

As a veterinarian, I am deeply concerned with public safety and with the wonder of the human-animal bond. We need to foster this bond, not break it apart. Bill 132, as written, will break the human-animal bond, and that is unforgivable.

If Bill 132 is passed with the breed-specific sections left in place, as a voting citizen of Ontario I will never forget on voting day which party enacted this legislation. There are many others who feel the same way as I do. In the many, many hours I have spent researching Bill 132, I have lost complete confidence in the Ontario Liberal government's ability to serve my interests fairly.

Thank you very much for your time.

The Chair: Thank you, Alexandra. That concludes the time. Unfortunately, you won't have time for questions.

1440

AIMEE ROBINSON

The Chair: Is Aimee Robinson in the room?

Mr. Kormos: On a point of order, Chair: While this person is seating herself, I say this to the parliamentary assistant: You pull the breed-specific portions of this bill and New Democrats will commit to passing this bill in one legislative day on our return to Queen's Park, the time split equally three ways. If you're serious about dangerous dogs, we can have this bill passed in one day. Pull the breed-specific sections.

The Chair: The merits of the offer notwithstanding, it isn't a point of order.

Aimee, welcome this afternoon. You have 10 minutes to discuss with us. Please begin by stating your name for the purposes of Hansard. If there's any time remaining, it'll be divided among the parties for questions. Go ahead.

Ms. Aimee Robinson: My name is Aimee Robinson, and I live in Chatham, Ontario. I am also a volunteer with the Chatham-Kent OSPCA. I am leaving a package with you that I will be referring to here and there and I hope you have time to read it very thoroughly in your leisure. It's quite extensive, actually.

I have come here today to try and restore my faith in my government, and the Liberal Party especially, for which I have voted for the last 10 years. If Bill 132 passes as is, the last vote will have been my last.

I have come here to discuss the alternatives to breed-specific legislation. Anyone who has thoroughly investigated breed-specific legislation will know that it does not work.

First of all, breed-specific legislation and Bill 132 have been brought forth by media hype and the public fear and stereotyping of the breed, pit bull. Pit bulls have been shown in the media as bloodthirsty, aggressive killers. This leads to many reports in newspapers and on TV incorrectly reporting a dog attack as a pit bull attack.

For example, recently, in November 2004, newspapers reported another attack by a pit bull that "crashed through

a front door" and attacked a paper boy and his mother. The Attorney General seized this incident as another reason to ban pit bulls. This dog was not a pit bull but in fact a mutt made up of several breeds, such as a whippet, a Great Dane and a Dalmatian. Also, this past January, three dogs in Ottawa identified as pit bulls attacked two young boys while one boy fended the dogs off with a shovel—again, not pit bulls. If the public does not follow up on these stories, they just keep thinking it was another pit bull attack. Even if a dog that bites has a portion of pit bull in him, like the dogs in Chatham back in June who attacked the postal worker, he is automatically deemed a pit bull. What about the Lab, shepherd or spaniel breed that is within him? There are even accounts of news anchors staging dogfights to increase TV ratings.

These occurrences also reinforce the misidentification that occurs on a daily basis with this breed. You don't hear about the other breeds attacking, because that doesn't sell newspapers, but there are many other attacks occurring by different breeds, and we have heard some of those today. I've also included a list of just some of these attacks in the handout that I've left with you. Other breeds do attack and these attacks are just as horrific, like the one recently where a collie and Rottweilers were implicated. Why don't we hear about the pit bulls that save lives, like the ones used for rescue at ground zero in New York or the ones that helped the rescue team at the space shuttle disaster? What about the Seeing Eye dogs that are pit bulls or the ones that assist narcotics officers? People don't realize the greatness of these dogs when they can't see beyond the discrimination.

Placing the onus on the owner to prove their dog breed is impossible. In most cases, especially mixed breeds, there are no papers, no bloodlines, and some owners aren't even sure of the breed they own.

Pit bulls are loyal, affectionate, protective and devoted. All of these characteristics have been misused. The perception is that only criminals, drug abusers and gangsters own these breeds. Is this the truth? There are many pit bull owners like myself who have taken the time to understand the qualities of this breed, owners like myself who may be educated enough to understand the responsibility to the community because of the breed they own. Yes, all dogs bite, anything from a Shih Tzu to a Great Dane. Those who wish to own a larger breed of dog, any breed, need to be educated in responsible ownership.

Let me give you an example of typical public perception of a pit bull. In my office at work the other day, a customer asked me how someone like myself could "own a dog like that." "What made you choose a breed like that?" he asked. "Do you have children at home? I never imagined someone like you would own a dog like that." After picking my jaw up off the floor, I replied that he was simply basing his thoughts on the stereotypical images promoted by the media, and mentioned that perhaps he should research this, as this type of thinking was part of this public hysteria.

There are hundreds of reports of people and their dogs being physically and verbally abused due to this public

hysteria. Some of these dogs are not even pit bulls but are being mistaken for them. Again, this proves that this breed is misidentified daily. People and dogs are having cans, bottles and rocks thrown at them. People are being spit on and dogs are being kicked and threatened to be shot. How can anyone say that public hysteria is not a problem here? Now people are being stereotyped as well.

There is no point in mentioning statistics. They are not very accurate. There are too many variables, like privacy laws, and the stats are just not recorded regularly and accurately. Only 10% to 20% or less of dogs are licensed. With pit bulls, the number is even smaller. We don't know the true population of breeds. Without that information, stats are not reliable.

I question the success of the Kitchener-Waterloo ban. They say the number of pit bull attacks has decreased. That would only make sense, since now there are fewer pit bulls in the community. What about the dogs that are still attacking in Kitchener-Waterloo? What about the dogs of other breeds that viciously attacked before the ban? I ask, why was this pit bull that crossed 10 kilometres roaming free? Where was his owner?

The Chair: Aimee, you have about two and a half minutes left.

Ms. Robinson: We need to reinforce some of the impacts of Bill 132 in Ontario. Animal shelters are being overrun with dogs being turned in because of Bill 132. Michael Bryant said this wouldn't happen and he was wrong. People are turning in their dogs because they don't want to deal with Bill 132 and they don't want to be harassed. The financial impacts on these institutions are huge. The Chatham-Kent OSPCA reports a huge increase so far of these dogs being turned in—over 80% more; so does the Windsor OSPCA. First, Bill 132 attempts to force them to enforce a law that they disagree with and are not willing to enforce, and now the other impacts are just surfacing. Stress on the staff is excessive. What is happening is against all that they stand for. They are euthanizing perfectly lovable, adoptable dogs.

The city of Chatham wanted to pass a bylaw banning the breed without even having an inkling of the true population or realizing that this affected their statistics. You can walk door to door and count the number of pit bulls in Chatham, and not including the ones being hidden for fighting purposes, I can guarantee a count of thousands of dogs. As of this past summer, only 30 pit bulls were licensed in the city.

According to research in the paper *Financial and Social Implications of Breed Specific Legislation*, presented to the Legislative Assembly in New Brunswick, there will also be an impact on Ontario's tourism. Approximately \$1.04 million a year will be lost.

Many places have made reports and recommendations to eliminate or to not proceed with breed-specific legislation, such as: 2001, Halifax and Ingersoll; 2003, Mississauga and Edmonton; and 2004, Cambridge and the province of New Brunswick. After careful and in-depth research, New Brunswick decided against breed-specific legislation because it was proven too costly, socially and

financially, and there was no evidence to support the success of breed-specific legislation. They decided to focus on penalizing irresponsible owners and breeders of all breeds.

The Chair: Aimee, you have about one minute left, if you want to sum up.

Ms. Robinson: I'm just about done.

New Brunswick plans to penalize puppy mills and backyard breeders, require spaying or neutering of companion animals, increase fines and impose a lifetime dog ownership ban on owners found guilty of criminal charges under the law. New Brunswick realized that breed-specific legislation fails to recognize many factors that contribute to aggressive dog behaviour, such as inadequate socialization, training, poor health, injury, abuse and mistreatment. New Brunswick is focusing on education, prevention, responsible dog ownership and commitment to enforcement. The cost of implementing effective education programs is substantially less than the cost of BSL. Two examples are BEAT—Be Aware, Educate and Teach—in Alberta, and PAWS—Public Awareness Works—in New Brunswick. In Alberta there are three designated animal officers in charge of education.

Ontario's taxpayers' money will be better spent on promoting responsible dog ownership, education, increasing penalties, stronger enforcement, stopping backyard breeding and funding animal services that will help to enforce and administer these laws.

The Chair: Thank you very much.

Mr. Zimmer: Mr. Chair, just before the next witness, I'd like to read in a statement, about 30 or 40 seconds, on a point that I'm going to describe as personal privilege.

The Chair: Does this pertain to a question? Because otherwise it would be out of order.

Mr. Zimmer: It pertains to some evidence that was heard this morning.

The Chair: It would be in order if the point is raised again, but we didn't get to you in the rotation. I'm sorry.

1450

RONALD BROWN

The Chair: I'd like to know if Mr. Ronald Brown is in the room. Mr. Brown, welcome this afternoon. You have 10 minutes before us. Please begin by identifying yourself for Hansard. If you leave any time for questions, it will be divided among the parties.

Mr. Ronald Brown: I'm Ronald Brown from Cambridge, Ontario. I feel like I've come to a formal wedding and I'm the only who's not wearing a tuxedo. I just got here about an hour ago, but am I the first one to be for the ban? It seems that everybody I've heard is against it.

Mr. McMeekin: The third one.

Mr. Brown: First of all, I would like to thank the committee for allowing me to take the opportunity to speak on behalf of myself and also my wife, who was the victim of a pit bull attack approximately 15 years ago.

We both would like to see a complete and total ban on pit bulls in Ontario.

This breed of dog seems to have an inherited need of some kind to not only attack, but the total instinct to kill by first wounding, and then clamping on to the throat of a victim, be it a human or another animal. It seems they will hold on to the throat until they are almost killed by a person. They are like a loaded gun, and when something inside them pulls that trigger, there's not much you can do to stop the attack.

My wife loved all dogs, but after this attack she could hardly bear to look at any dogs. She ended up going to a psychiatrist, who tried to fix the problem, but to this day I don't think she is comfortable around too many dogs.

My next paragraph here was about the Cambridge dog that went through the screen door, but apparently it was not a pit bull, so I'm not going to speak on that.

What we're really here for today is to try and protect our children. Why do we insist on having school crossing guards? Why do we hold their hands in a busy mall? Why do we put them in child car seats? I know you're going to hear from some people that it's the owners and not the dogs that are responsible for these attacks. I don't believe that for a second. Have you ever seen a Seeing Eye pit bull? Apparently the lady has seen a Seeing Eye pit bull but I have never seen one.

Ladies and gentlemen, the pit bulls you see today are the offspring of a breed of dogs trained and bred to do one thing: to fight in a closed ring in an 18-wheel tractor-trailer or a secluded barn somewhere out of the reach of the authorities and usually fight to the death.

Our neighbours in Kitchener-Waterloo, Brantford and I believe Windsor have already banned pit bulls in their cities, and I hope the people responsible for the voting in all of Ontario will also ban them from the province.

I listened to a breeder's claim that banning this breed in Ontario is nothing short of ethnic cleansing. I do not agree with this statement. We are not saying to destroy all pit bulls; we are simply saying that if you insist on breeding them, do it somewhere else, not in Ontario. If you have ever witnessed a pit bull attack, this decision would be a no-brainer.

This bill to ban pit bulls should be called Save Our Children from Unnecessary Terror. I owe it to my children, my grandchildren and also to my great-grandchildren to try to do everything possible in my power to stop these stupid and senseless attacks. If I did nothing and one of my grandkids were attacked and severely injured, I'm afraid I wouldn't be able to get up every morning and look at myself in the mirror, knowing that I did nothing to prevent it.

Again, thank you for listening to me. Please believe me, I am not a dog hater; I've owned many dogs in my lifetime and loved every one of them. Thank you very much.

The Chair: Thank you for coming in, Mr. Brown. We've got time for a few questions, beginning with Mr. Kormos for about a minute and a half.

Mr. Kormos: Thank you for your comments. You've heard the exchanges that have taken place, because the focus is very much on this issue of a breed-specific ban versus the broader dangerous dog. I appreciate your comments, and your patience with all of us for sitting through I think the whole day.

Mr. Brown: I thought that maybe I was all alone here, but apparently there were two other people who were—

Mr. Kormos: There were. Thank you kindly.

Mr. Zimmer: Mr. Chair, may I ask for unanimous consent to put my point of personal privilege on the record that I referred to earlier?

The Chair: Agreed? Agreed.

Mr. Zimmer: Unfortunately, earlier this morning certain statements were made to this committee. These statements included references to fascism and to the final solution. These statements were made in the context of dog safety legislation. Comparisons to fascism and the final solution are deeply offensive to me and to others, to my fellow legislators and to citizens of Ontario. These offensive statements are abhorrent. They trivialize the tragedy of the Holocaust. They have no place in this debate. This language should be condemned. Thank you, Mr. Chair.

Mr. Kormos: If I may, Mr. Zimmer explained his concerns to me prior to him raising this matter. I concur that it's regrettable that people, in the passion with which they approach this particular issue, use such powerful comparisons, which have as their net effect, as Mr. Zimmer points out, the prospect of trivializing the historical reality of these events.

Again, I don't condemn the person using this language; they were doing their best to convey an image. However, I concur in the regret that that type of language and those types of comparisons are utilized in the context of this debate.

The Chair: Thank you. I echo the sentiments and I'm sure none of the deputants meant offence by the comments.

Mr. Levac: On a point of order, Mr. Chair: Mr. Brown made a presentation that, unfortunately, we didn't get a copy of. I would again ask if the clerk could get a copy of Mr. Brown's presentation so that we can use it for study.

The Chair: Mr. Brown, could we make a copy of your presentation for the committee's records, please? If you need it back, we'll give it back to you.

SANDRA LIGHTFOOT

The Chair: Our next deputant is Sandra Lightfoot, who will be joining us by teleconference from Brampton. Ms. Lightfoot, are you on the line?

Ms. Sandra Lightfoot: Hello.

The Chair: Ms. Lightfoot, this is Bob Delaney speaking. I'm the Chair of the standing committee on the Legislative Assembly. You're addressing us here in Brantford, and you're now by telephone before the standing committee. You have 10 minutes to talk with us

this afternoon. If you leave any time, we'll divide it equally among the parties for questions. Please begin by clearly identifying yourself for the purposes of Hansard. Welcome this afternoon, and please proceed.

Ms. Lightfoot: My name is Sandra Lightfoot. I live in Brampton. I'd like to add my name to the list of those who are wanting to have pit bulls eliminated from our society, and I will tell you my little story. But before I get into my little dissertation, I would like to preface this whole thing by saying that I am an animal lover. I've had animals of one sort or another in my possession, right from alligators to pigs to turkeys, cats, dogs; you name it, I've had them, so I've had a vast array of animals around me my whole life.

My story goes back, starting about two years ago. At that time, about this time of year as well, we saw this skinny little frail cat in our yard. It looked like it was next to death. My first impulse, of course, was to go and get it and save it. It was having no part of us, so the next step was then to put food out for it. I attempted to leave water; of course, that was a difficult task. Anyhow, to make a long story short, we did save this little cat. After kilograms and kilograms of food, she came back to fairly decent health. We devised a little house outside of our back door, and she became quite friendly with our family.

1500

Coming into May, in fact it was the Friday before Mother's Day—I'm also a letter carrier, so I encounter numerous dogs, the majority of whom are friendly, because I entice them with little cookies. At any rate, the Friday before Mother's Day, I then mentioned to a veterinarian on my route if he would have a look at this cat, because I said, "We'll either adopt her out or perhaps I'll adopt her myself." He said, "Sure. By all means, bring her in."

On Mother's Day, my sons took me out and I returned in the afternoon. Of course, my first step was always to check to see how our little adopted friend was doing, only to be greeted by my next door neighbour, who said, "Don't go there."

I looked at him rather puzzled. He said, "Unfortunately, you had some unwanted guests while you were away." I was still puzzled and looked at him. He said, "Well, our friendly pit bulls"—there are more than one; I believe there are three or four now at this time; I'm not quite sure—"broke through the trellis of your gate and came in and devoured in a frenzy our little adopted cat."

Needless to say, I was sad, angry, extremely upset, and, by the way, I still am upon telling this story. I reported it to animal control. I wanted to take them to court because I figured this was my property and this was not fair.

Like I say, I'm an animal lover, but you know what? Animal, human—I don't care. We all live by the goodness of the earth, and that's not to destroy or go into a friend's—and the neighbour said, "Yes, it was pretty brutal. They literally tore that little cat apart," and, of

course, I could see remains of fluff and fur and everything else all over the place.

He said, "In all probability, it was likely just as well you weren't there, because knowing you, you would have attempted to save the little thing and they, in turn, likely would have attacked you." My sons heartily agreed, knowing the nature of their mother.

At any rate, I then kind of resettled myself, looked at my gate—yes, the trellis was broken. They'd fired through that thing like it was water. My little friend was no longer in existence. So to make a long story short, they were advised to keep these animals under muzzle when they're off the property, and that's the sum total of what became of it.

I then went and spoke with the wife at one point in time and told her how unhappy I was that nobody had even attempted to apologize to me or make any kinds of amends. I mean, we even had tears, because we'd become quite attached to this wee animal. In fact, she was separated at that time. I'd just come back to the neighbour. She said, "I don't know why they have that animal in the house anyhow. He's bitten everybody in there." At that point in time, the thing lunged at me as I was leaning on the fence, and I said, "I don't like this dog." She said, "Well, they're all of the same ilk."

I have two cats that I keep in my house. My son has put up a fibreglass block on the screen door because we're afraid that these animals will come into my yard—which they have done already—and I'm afraid they're going to come through the screen. My neighbour and I have put up a six-foot fence. He has grandkids and he's as fearful of these stupid animals coming and attacking his grandkids. So he says, "No. I'll put this fence up. I can't be bothered with this."

On other occasions, I have had those dogs come under the fence and appear in my yard again. Again, I called animal control. They came over and, of course, by the time the animal controls get all over here, the people had recalled their animal and said, "Oh, no, he was never there." I stood there and I looked at the animals in my yard. This is a threat to me. So needless to say, I'm not a happy camper, and if people can't control these animals—obviously, I've heard their owners screaming and yelling at them to try to control them—once they start, they're not to be controlled.

I'm sorry, but animal lover or not, there's a place for everything, and that's not in our society. That's my story.

The Chair: Thank you very much for calling in with your deputation today. We've got time for perhaps one very brief question from each caucus.

Mr. Miller: Thank you for talking to us today and for telling this unfortunate story about what happened to you and your cat. One of the questions to do with the legislation that's proposed, Bill 132, is the definition of what a pit bull is, and they've defined a few types of breeds of dogs. In your case, how do you know that the dog is a pit bull?

Ms. Lightfoot: I happen to know it because they breed them.

Mr. Miller: They breed pit bulls. The pit bull is actually not a breed of dog. There are a few different types that, in the legislation, they're defining as a pit bull. Is this a backyard breeder?

Ms. Lightfoot: Yes, that's correct. He happens to be directly attached to my yard. Yes, a backyard breeder, not a registered breeder.

Mr. Miller: So these are not purebred dogs, then.

Ms. Lightfoot: According to them, they are purebred because that's what they're breeding them with, so-called pit bulls. I do not have the proper credentials to go and properly identify them, but in the nature of the animal, they fit the bill. I know there are deviations of this breed and I know it's part of the problem, but I also do know—and I've had other occasions and encounters with these animals. A friend of my son had a dog that latched on to another dog's throat. He broke his fist trying to get that dog to release the dog's throat.

Mr. Miller: In the case of Kitchener, which has a breed ban for pit bulls, in their definition they exclude purebred Staffordshire bull terriers and what they describe as "registered with the American Kennel Club or the Canadian Kennel Club" American Staffordshire terriers. So this dog that attacked you would not be a purebred, then, based on what you're saying?

Ms. Lightfoot: Do you know what? I never—in fact, now the neighbours don't really talk to me, so I can't say whether they have papers or not. I'm not in the position to say definitely yes, or no, they definitely are not.

The Chair: On that note, I want to thank you very much for your time this afternoon. That concludes the time for your deputation. Thank you for sharing your story.

MARGUERITE CHARTER

The Chair: Is Marguerite Charter in the room, please? Welcome this afternoon. You have 10 minutes to present to us today. If you leave any time, it will be divided among the parties for questions. Please begin by identifying yourself for Hansard, and then proceed.

Ms. Marguerite Charter: I am Marguerite Charter from Brantford. Before you start the stopwatch, I would like to thank Mr. Levac for being here because he does have some influence on our own city council. I'm also very pleased to see Richard Carpenter, our councillor, walk in because now we have legislation in our municipality. Unfortunately, I did not know that they were going to hold discussions at city council and I was not given an opportunity to speak. So I hope their ears are open, particularly Mr. Carpenter's. Here I go.

I'm here to present today a different perspective on curbing dog aggression. In the time allotted to me, I would like to focus on the following issues: some causes for aggression; the role of the CKC; the role of the kennel clubs and trainers; obedience training; concerns that I have regarding the SCPA; and the role of the Legislature.

Over the past 50 years, I have been involved with virtually all breeds through training, breeding and 44

years of judging. I have judged from coast to coast in Canada, part of the USA and Bermuda, and these experiences have helped me formulate some opinions that I feel should be addressed in stemming the problem related to aggression.

When a dog becomes popular through the media, and by advertising too, such as the dogs Rin Tin Tin, the Littlest Hobo, Lassie and, of late, the Jack Russell terrier, people believe that the purchase of one of these puppies brings with it the same attributes as they see on TV. We even have crossbreds now being advertised in the paper. I happened to meet one of these crossbreds and the owner, and I asked him, "What breed of dog do you have? It's very cute." I was told, "This is a new breed. It's a spaniel-poodle, or called spoodle." We have many of these. I often wonder, what genes do they bring to the table of dogdom?

1510

When the breed increases its popularity, the standards decrease. Indiscriminate breeders see the demand for them and then the dollar signs begin to pop up. These dogs are bred and sold without thought of selective breeding for temperament. Dog aggression is not specific. I had the opportunity of seeing a chihuahua bite a lady in the face, leaving scars. Small children are attracted to small dogs and the consequences can be more severe.

I'm looking at a possibility—we know that all businesses are levied taxes for their operations. Registered kennels pay a tax. Why not levy a tax on backyard breeders? If an owner refuses to co-operate, then penalties should be enforced. Bill 132, under search and seizure, gives a peace officer the authority to execute a warrant. Following this, penalties must be levied. I'm also asking that the citizens of their communities keep an eye open. If they know that these backyard breeders are in operation, to whom should they report this?

The role of the CKC is mandated to promote purebreds. They have no jurisdiction to intervene when non-purebreds are at fault or when some purebreds are not registered with the CKC. They have worked very diligently with puppy mills: fewer and fewer puppies are seen in our pet stores. At the annual meeting in 2004, they indicated that the possibility of allowing non-purebreds to be shown at obedience trials was a very positive step forward. This will open the door for people to become interested in training their dogs.

Let's have a look at our kennel clubs. Most kennel clubs hold obedience training classes, as well as trainers setting up their own establishments. This brings a dilemma: If a dog has shown traits of aggression during and to the end of the 10-week course, what should be done? Perhaps a suggestion to the owner about the seriousness of the problem; suggest another course or we report—but to whom? This has been covered by your legislation under Bill 132 in search and seizure, which gives the peace officer the right to go in and investigate.

Kennel clubs do not have sufficient funds to advertise an eye-catching ad about an open meeting to educate

non-members about the dos and don'ts of ownership, so I'm asking you to encourage these clubs to be innovative, instead of a law that threatens the demise of a specific breed. Members of these clubs are all dog-lovers. They all have the same concerns about aggression and they want to help solve this matter.

Let's move on to training. When obedience exercises were set out, much thought was given behind each step of the way. In our obedience rules and regulations, the purpose points out what each training objective is. The basic objective of obedience trials is to produce dogs that have been trained to behave in the home, in public places and in the presence of other dogs.

Dogs are pack animals and only survive when they have a leader. Training instills in the dog that the owner is the leader. During the training period, the dog-leader relationship develops and the purpose of obedience training is fulfilled. A dog's behaviour mirrors that of his environment.

Let me give you an example of a well-trained dog. A judge on a tracking test in Thunder Bay, following a German shepherd on a 20-foot lead, was out on the track when a bear ambled across his track approximately 10 feet from him. The handler very quietly said, "Stay." The dog stopped. It did not growl, did not bark, did not snarl, but stood there until the bear disappeared. Then the handler gave him the command to seek. He went on and did his business—to great success, let me say.

Locally, a dog got into serious problems in 2003, and our local paper reported the incident. The owner was ordered to muzzle and to attend obedience classes. When he was interviewed by a reporter, this is what the owner said: "He has been an excellent canine citizen of Brantford ever since."

The Chair: Marguerite, you have about two minutes remaining.

Ms. Charter: While writing this presentation, CBC News reported another attack in Toronto, at which time the medical officer of health and a vet stated that public education would be an answer to their woes.

As you are experiencing, when something is mandated, there is criticism. Likewise with obedience. I've often heard over the years that people do not believe in training because it is harsh. It is the nature of a dog to want to please, and child psychologists maintain that punishment is harmful in shaping human behaviour. The same is true about dogs.

Everything we have in life has a cost. Sometimes things are needed and some are very frivolous. The fee for training is usually around \$100 for 10 lessons, and this cost of owning a well-behaved dog far exceeds the cost and time spent for training.

Over the time of my judging, I have had the pleasure of judging people who need a cane, crutches or a wheelchair. Some have been deaf, some have been blind and one was a deaf-mute. A 92-year-old lady handled a Kuvasz, a very large dog, in my ring, and a seven-year-old handled her pet toy poodle. All these people trained

their own dogs and are having fun, and now can go out into the community and say, "See what I've got?"

This brings me to you.

The Chair: You should sum up very quickly.

Ms. Charter: I would ask the government to flood the news media about the advantages of training. A well-mannered dog is an asset to the community. To legislate training for all dogs is probably impossible. However, I'm sure that this can be overcome in some manner.

I will cut out much of the SPCA. I have great concerns about that, because in Bill 132 you have increased their workload. Financially, how are they going to keep this? I would like to see you come out and—

The Chair: On that point, I'm sorry, I do have to stop you.

Ms. Charter: Just one moment, please. I am cutting out. I am saying education, education, education: education for owner, for breeder and, of course, for the four-legged animal that cannot talk for himself.

The Chair: Thank you very much for having come this afternoon.

Mr. Levac: Point of order: Mr. Chair: I'd obviously like to thank the deputant, but I would also ask again, for purposes of study and feedback, to get a copy of Ms. Charter's presentation.

The Chair: Is it possible to have the clerk copy your notes?

Ms. Charter: Not for the clerk to copy it, because it's all over the place, but I will have it typed out for you and bring it to your office.

Mr. Levac: I'll make sure I dispense that to the members, because we are here to listen.

The Chair: Thank you for coming this afternoon.

1520

ELLIE ROSS

The Chair: Are Ellie Ross, Petra Hell and Judy Rich in the room? Did I get the pronunciation of your names right?

Ms. Petra Hell: My name is Petra Hell.

The Chair: Welcome this afternoon. You have 10 minutes to speak with us. Please begin by introducing yourselves for the purposes of Hansard. If there's any time remaining, we'll divide it among the parties for questions. Please proceed.

Ms. Ellie Ross: Thank you. My name is Ellie Ross. I'm the owner of Wag 'n Train in Kitchener, which is the largest dog daycare and training centre in Canada. I've been training dogs, horses, elephants, cats, you name it, for the past 15 years and I've been a behaviour counsellor for five years, a consultant to the K-W SPCA, Canada Post and the city of Kitchener. I'm a member of the Canadian Association of Professional Pet Dog Trainers, the Canadian Kennel Club, the Agility Association of Canada, the Pet Industry Joint Advisory Council, the Golden Retriever Club of Canada, the Greater K-W Chamber of Commerce, the president of the North American Dog Daycare Association, the host of Pup Talk on

CKCO television and the host of the Canine Minute, a Talon Productions canine educational series.

I have been involved with training and teaching everything from dogs to elephants for many years. I have been a regular behaviour consultant as well as having trained the staff at the SPCA. Canada Post has sought out my input on the ever-growing problem of their carriers being bitten, which, by the way, is the number one reason why they have time off work. The city of Kitchener has utilized me as a consultant in reviewing some of their animal control bylaws, the dangerous-dog bylaws and, most recently, to mandate the dog daycare industry.

I also field questions almost daily from people who call with behaviour problems, asking if there's a quick fix or a magic pill. No. In most cases, they've never taken their dogs for any type of training. Yes, I do train dogs, but my biggest job as an instructor is to teach people how to train their dogs, and this by no means is a simple task.

People get dogs for different reasons: Some are for hunting and retrieving, some for participating in various sports like obedience, flyball, agility, tracking, pulling sleighs, water sports and field trials. And then there are those who just want a dog for a watchdog or the desire to feel protected. Some want a dog for company or maybe to assist in chores like a service dog. There are some who want a dog just because it's the thing to have around, like a status symbol.

How many of these different types of dog-related reasons, be it sports or hobbies, need training? They all need training. I would be asking the person that would like a Rottweiler for a status symbol, "Why?" The latter two persons should not be allowed to have a dog. Education is the most effective and proactive approach we could possibly take to address this problem today. If people realized that the majority of dogs trained to be guard dogs are most likely to bite their own family, would they pursue this? If people understood how cruel it is to isolate their dog, which is a pack animal that desperately requires company for its mental stability, to chain him up in the yard, would they do it? If parents knew to teach their children that hugging a dog was unacceptable behaviour, as this is one of the most common reasons for a bite to the face, would they do it?

I've participated in dangerous-dog hearings and have seen the graphic pictures of children who were victims of a dog bite. I've seen the parents and the owners of the dog that inflicted the wounds and I believe that all three—the parents, the child and the dog owner—all of their actions would have been different and the outcome wouldn't have been the same had they only had a little bit more knowledge. It's one thing to take your dog to school where you learn to teach it to sit and lie down. We need more than that.

The government has implemented so many effective programs to educate the public on everything from our heritage to our health. This is without a doubt a health and safety issue, not a breed issue. Did you know that in the United States, someone is treated for a dog bite every

four minutes? A great deal of these could have been avoided had a little bit of knowledge been passed on.

My 15 years of experience in dealing with dogs and people has taught me many lessons. The simple fact is that dogs are animals and will always be animals. Domestic animals are owned and controlled by people like you and I. We choose to train them and to love them. We can also abuse and mistreat them. We can choose to let them run loose and out of control or we can choose to keep them safe by keeping them in our homes, fenced in our yards, crated or penned in dog runs or cages. In other words, dogs and pets are at our total mercy. Why would we look at specific breeds? Indeed, there is a need to toughen up laws and penalties for those who choose not to contain, control, socialize and train their dogs. I, along with many of my associates and colleagues in the fields of training, showing, trialling, agility, obedience, tracking, flyball and field sports, all agree that we could support tougher penalties to curb aggressive behaviour and make life safer for our fellow citizens.

I truly support Mr. Bryant's desire for change and I sincerely applaud his efforts to acknowledge this growing problem in our province. We do have a problem. We need to find a solution, but the solution needs to be effective. I see the present proposal as a door leading to many more problems that most of you are not even aware of or have not had the foresight to look ahead to. It will drive a number of these dogs underground, which will then have no social skills, making them even more dangerous to visitors to their homes. Just imagine how dangerous that animal will be the day it finally breaks out and enjoys momentarily its freedom until it meets up with an unsuspecting stranger. I have seen this happen many times in the city of Kitchener. I have seen it happen in the United States. I travel extensively with all of my dogs and I have been to many cities and states where there are breed bans in place. BSL drives these breeds underground and leads to secondary problems. In addition, it makes the breed more desirable to many. It will lead to crossbreeds that cannot be identified and, worst of all, the importation of dogs that have a far more notorious reputation will be on the rise. What scares me the most is that the solution will indeed worsen the problem. Please, I am begging you to address this as a dangerous-dog bylaw and not BSL.

I, like many others, have my own pit bull experience. I have known them to be the most heroic of dogs to save human life and I've also witnessed them literally tear the face off of my closest friend. I've seen clips of dogfights at the peak of a fight. In the peak of the fight, when the fight was to be broken up, the dogs were roughly manhandled and removed from the ring by none other than a human. The dog did not make any attempt to bite the person whatsoever. The breed was not specifically bred to have aggression toward humans. On the flipside, golden retrievers were bred to retrieve birds. I have two goldens, one that will retrieve birds, balls, sticks all day long, and the other who will watch it land and look at you

as if to say, “Well, you threw it away. I guess you just don’t want it.”

I’m not going to stand here today and tell you that I like pit bulls or that they are safe as pets, but I’m also not going to stand here today and tell you that you should only buy a golden retriever if you want a safe pet. I will say that all dogs bite. All dogs have the potential to do damage, some more than others.

The Chair: Just to let you know, you have about two minutes left.

Ms. Ross: If we don’t take a similar approach in our other laws—for example, statistically, uneducated single white males with a criminal record under the age of 30 are likely to reoffend. Do we banish them legally from society? No, we rehabilitate. We educate our children, and we implement social programs to reduce the likelihood of the offender reoffending and our children from falling prey to them. Why are we suddenly taking a different approach with dangerous dogs when history has shown us that this approach is not effective?

What we would like to see and what we would propose that has already been seen by several MPPs, our health minister and our Solicitor General, is that we have a series of one-minute, ready-for-broadcast educational videos that, in conjunction with a dangerous-dog bylaw, will result in people being accountable and taking responsibility. Seventy-four per cent of dogs that end up in shelters never had the opportunity to attend training. We have to, at the very least, consider this to protect our children, our community and even our pets.

Dog licensing is a form of revenue for communities, but what do people get for their money? They get a tag, a chance that if their pet runs stray, the tag could be the ticket home. While that’s valuable, licensing could go way up if people were getting more for their money. A portion of dog licences should be directed to education, and it is estimated that only one in four dogs in southern Ontario is licensed. This has no secondary problems attached to it and this approach has a proven history.

We assert that the present proposed legislation would be a facile and ineffectual approach that will not protect your constituents or enhance your public safety.

The Chair: We would have time for one brief question. Going once? Ms. Munro.

Ms. Munro: I would just like to thank you for bringing your perspective to the committee, and I think that in looking at the problem with breed-specific and the importance of ownership, we’re all—certainly as someone who put forward a private member’s bill to deal with that—sensitive to that issue. I guess it’s a bit like the people who see the difference between the drunk driver and the car. We don’t ban the car; we go after the drunk driver. I think it’s this kind of logic that is probably part of your presentation as well.

Ms. Ross: Thank you.

The Chair: Thank you for coming in this afternoon.

1530

KENT JONES

The Chair: Is Kent Jones in the room?

Mr. Kent Jones: Yes, I’m Kent Jones. I’m from London, Ontario.

The Chair: Welcome, Mr. Jones. If you’ve been here for a while, you’ve got the gist of it.

Mr. Jones: Yes, I’ve been here for quite a bit, most of the day.

I see I’m vastly outnumbered here by the opponents to this legislation. It appears they’re pretty well organized and pretty vocal. Well, I can’t afford that luxury. I’m just an ordinary citizen speaking out for the silent majority.

I drove here from London today because I felt so strongly in favour of this law that I had to speak out. I have nothing to personally gain from this legislation being passed other than the knowledge that I can again take my family and my kids to public places without the fear of these dogs and their aggressive nature intimidating us.

These dogs were bred for one purpose, and one purpose only: to be aggressive and to fight other dogs. This is the inherent trait of this breed. Just like the pointers are bred to point, and what do they do? They point. Retrievers are bred to retrieve, and what do they do? They retrieve. Sheepdogs are bred to herd sheep, and what do they do? They herd sheep. Pit bulls are bred to attack, and what do they do? They attack.

These dogs are predictable. As we’ve heard countless times, over and over, there are more bites from lapdogs such as poodles, chihuahuas, Jack Russells, etc. than pit bulls. Of course there are. That’s because there are vastly more numbers of these breeds in public. But I can’t remember the last time I heard of a poodle ripping a kid from his mother’s arms and ripping his face off.

I would rather be attacked by a cocker spaniel every day for a month than one of these pit bulls even once. If I’m attacked by a poodle or a Pekinese, I can pick the thing up, throw it across the street and be on my way. Comparing bites from these breeds to bites from pit bulls is like comparing apples to oranges. It’s absurd.

I have some facts here, and this is from an organization that advocates on behalf of these dogs. It’s Pit Bull Rescue Central: www.pbrc.net. This is in their own words: “Pit bulls have been selectively bred for hundreds of years to fight other dogs. Even in dogs not recently bred from fighting lines, the urge to fight can arise at any time. And not to emphasize this fact would be negligent. It’s a mistake to think that the fighting gene can be trained or loved out of these dogs.”

Another point: “Good-intentioned but ignorant owners who obtain a pit bull, convinced that the dog’s temperament is ultimately influenced by how you raise them, do tremendous damage to our dogs, as well as the community in which we live.”

A final statement: "This is not the type of dog you should get if you're looking for a pet to take to the dog park or to the lake on Saturday afternoons."

Again, this is a group that advocates on behalf of this dog.

I'm getting really sick and tired of all these "responsible" owners and breeders who, every time one of these dogs attacks, is laying blame and pointing fingers everywhere but where it lies. We now have a woman in London who's refusing to muzzle her pit bull after it attacked a woman in public, because, as she states, "it was provoked by the way this victim was walking."

I think these owners should take a good, long, hard look in the mirror. All these so-called responsible owners would have known years ago when they bought this breed what it was capable of. They would have known exactly what the disposition of this breed was. If they were so responsible then, they would have done the right thing, muzzled their dogs in public, and we wouldn't be here today. These people have set their own dogs up for failure.

As for the breeders, these people are in the business of breeding these dogs for one reason and one reason only, and that's the money. These dogs are no less a commodity than anything else marketed for the public consumption. Like any producer of any product, you assume a high degree of liability that your product is safe and will not be injurious to its end-user. If it is, you're liable. It's no less with these dogs. If all these responsible owners of these dogs that attack aren't at fault, then the onus must be placed on the breeders, for it is the inherent traits bred into these dogs.

The arguments in defence of this breed are just getting more and more ridiculous as we go. You've heard the woman comparing the passing of this law to genocide and ethnic cleansing. This is unbelievable. These people know no bounds and will stop at nothing to further their own agenda. This comparison is ludicrous. I would be embarrassed and ashamed to even be associated with this group and their philosophy.

Another argument that keeps arising is that breed-specific banning doesn't work. Well, the fact is it does work. We need go no further than Kitchener-Waterloo, where attacks from pit bulls have dropped dramatically. If you want to go further afield, all of the most progressive countries in the world have bans against these dogs: Germany, France, Italy, Switzerland, Belgium, Portugal, England, all of Scandinavia, Sweden, Norway, Finland, Denmark, and the list goes on and on.

I would also like to add that I am not a dog hater. I have never had a problem with my neighbour's black Labs, chihuahuas or maltipoos running up and down the sidewalk, chasing my kids, playing tug-of-war or whatever, and I don't have a problem with my friends' and relatives' shepherd crosses and mutts chasing them in the lake. But I do have a problem with people who take their pit bulls to our festivals and Santa Claus parades for no other reason than to strut their machismo and bring them into my neighbourhood, threatening my family.

I believe that you have come this far and it is too late to turn back, or the next time we have an attack, there will be some legal repercussions against this government and not some mere grandstanding by some bought-and-paid-for lawyer in the pockets of the pit bull lobby. So I hope you do the right thing, represent the wishes of the majority of this province and don't succumb to the vested interests of the few who oppose this law.

The Chair: Thank you very much. We've probably got time for a brief question from each caucus.

Mr. Levac: Just my normal point of order to request if we can get a copy, Ken, of the body of your presentation.

Mr. Jones: It's pretty haphazard, but if she wants to try and go through it—

The Chair: You wouldn't believe how skilled Hansard is at making sense of just about anything.

Mr. Jones: I had a hard time myself.

Mr. Miller: Thank you for your presentation. We've certainly heard from all kinds of different dog owners and groups in the last few days, and about other jurisdictions that have dealt with dogs as well. Probably one of the most compelling testimonies was from Donna Trempe, whose eight-year-old daughter was killed by a bull mastiff. She actually testified against the breed-specific part of this legislation. There have been other people who have said that this legislation will in fact not protect the public but will give them a false sense of security because there are other types of dogs and it's not necessarily the dog, but the owner. In other areas that have brought in breed-specific bans, like the city of Winnipeg, for example, which has had a breed ban in place since 1990, there has actually just been an increase in other dogs that have been biting. Have you got any thoughts about that?

Mr. Jones: This lobby seems pretty well organized, and I can see a well-organized kind of misinformation. Who knows why these dog bites went up? I have no explanation for that.

Mr. Miller: Winnipeg banned pit bulls, but there was a huge increase in other types of dog bites, whereas in Calgary they dealt with all dogs, and they had a huge reduction. I believe it was a 70% reduction in dog bites, even though the number of dogs had doubled from 1989 to the present. So wouldn't it make sense to deal with all dogs instead—

Mr. Jones: Yes, I believe that. All vicious dogs should be dealt with under this legislation. But like I just said, all of Scandinavia and all these progressive countries in the world have legislation banning pit bulls.

Mr. Miller: There are also quite a few countries that have had breed-specific bans for many years, like England, and then rescinded it. We had some presenters today talking about Michigan and some other jurisdictions in the States where they brought it in and found it didn't work and have since rescinded it. So wouldn't it make more sense to deal with all dogs versus one breed?

Mr. Jones: I agree wholeheartedly. We have to deal with all vicious dogs. If it has to start with keeping them away from our festivals and things like that, where they

do not belong, where it is a family atmosphere—I brought this up with my own council in the city of London. I had an incident with a Rottweiler jumping at the balloons at the Balloonfest. I had to scoop up my little guy. I saw six other parents scoop up their kids because this dog was going nuts, jumping at the balloons. This kid that was holding him was a 100-pound punk, and he had no control over this dog.

I've got a problem with all aggressive dogs and that they aren't handled properly in public. If there has to be muzzling of all of these aggressive breeds, keep your dogs but have them muzzled when they're in public.

The Chair: Thank you, and thank you for having come in today.

Is Elicia Yule in the room, please? Elicia Yule?

1540

CITY OF BRANTFORD

The Chair: Mr. Richard Carpenter, city of Brantford. Welcome this afternoon.

Mr. Richard Carpenter: Thank you for allowing me to present today. I have provided you with a copy of my submission, as I'm not speaking to all this, of course. My points will be speaking to this document, and you have all been provided with a copy of that as well as my submission.

The Chair: Thank you very much. You've been here for a little while. You understand the ground rules. You have 15 minutes.

Mr. Carpenter: Fifteen minutes, yes. With me I have Carrie Hewitson. We're having very little review from victims, and Carrie has been a victim of a vicious dog attack in our community. Her brother Todd Hewitson is going to be working the PowerPoint. I want to share my time with Carrie.

The Chair: Please proceed.

Mr. Carpenter: Quickly, I want to talk about municipal council. City council has moved and passed a bylaw banning pit bulls from our community, and I want to talk about the process that we went through. First of all, the definition of "pit bull" in our legislation is exactly the same as in your proposed legislation. What I want to talk about is the grandfathering direction. The muzzling and leash regulations are the same as you're proposing.

In council, section 5 allows for grandfathering of pit bulls. Pit bulls that were previously owned were grandfathered to December 13, when the legislation was passed in council, those that are not subject to previous direction orders—muzzling orders and so forth—that haven't been appealed. Grandfathered pit bulls must be muzzled at all times while not on the property of the owner.

While not on the owner's property, the pit bull shall be under the control of a person over the age of 18 and on a leash no longer than three feet. While on the owner's property, the pit bull must be within a building on the property or wholly fenced yard or in a pen that is properly maintained.

The grandfathered pit bull must not have bitten a person or domestic animal. In the absence of mitigating factors, it must not have approached any person or domestic animal other than on its own property in a menacing fashion or apparent attitude of attack or otherwise have shown the disposition or tendency to be threatening or aggressive.

The grandfathered pit bull must have been registered with the city of Brantford and must have been owned prior to the bylaw coming into force on December 13, and it must be registered before April 1.

The animal must be spayed or neutered and certified by a licensed veterinarian. The pit bull must be micro-chipped and certified as such by a licensed veterinarian.

An insurance certificate insuring against liability in the amount of \$1 million: The policy must include the insurer, and the insurer must notify the municipality if the insurance policy lapses or they change insurers or they change coverage.

The owner shall have a sign posted as prescribed by the city of Brantford on its property stating that it has a pit bull on its premises.

"The ownership of a pit bull shall not change," so the ownership of the pit bull is not allowed to be changed. Any notification of the death of the pit bull must be presented to city council. If they move out of the community or anywhere in the community, they must notify us as well, so that we can check to make sure the signage is there.

There are a few suggestions for the provincial regulations that we would suggest you include in Bill 132 for the grandfathering of pit bulls. If your legislation does pass, and I hope it does, we were hoping that you will include these rules for grandfathering so that we can be sure that municipalities can actually track what's going on out there and have some rules to protect our citizenry.

We did not make this decision lightly. We began our review of our animal control bylaw by a resolution of council on December 15, 2003. The committee was comprised of two members of council, our vicious-dog committee, the Brant County Health Unit, Brant SPCA, Brantford police service, our city clerks department and our legal department.

The committee reviewed bylaws from a number of jurisdictions: the municipality of Chatham-Kent; the Town of Innisfil; the city of Stratford; the city of Surrey, British Columbia; the state of California; the city of Winnipeg; the city of Kitchener; the town of Chestermere, Alberta; and the city of Vancouver.

There are four key findings in our report that made up the recommendations. We had classifications of dogs, and I've heard that here today. Restricted dog, potentially dangerous dog and dangerous dog are the classifications.

I've already talked about the grandfathering provisions.

Care of dogs: the proper shelter, securing of the dog, ventilation and proper sanitary conditions for dogs.

Licensing fees and fines were discussed as well, and in the actual bylaw they were increased dramatically.

On December 13, 2004, council unanimously passed this bylaw. It was non-partisan, I must say to all members here.

This bylaw brought into force the pit bull ban. It is important to note that the committee did not recommend a complete ban on pit bulls. The whole committee was not in agreement. The chair of the committee's response to this was that he did not think council had the political will to implement such a ban, because you always hear from the negative and you never hear, necessarily, from the people who support it. You always hear, in the majority of times, from those who do not support what you're doing.

We intend to continue to bring forward the other recommendations the committee had made in regard to the sanitary conditions, the classifications, licensing fees and so on.

Speaking directly to Bill 132, we as a municipality have some concerns. All references in the bill refer to local enforcement officers. While we support the bill, we have some concerns about the cost of this enforcement. We're not expecting you to give us more money. You're downloaded enough. We would rather look at licensing fee increases that would allow such costs to be included in the fee. This may require a review of the Municipal Act and our ability to charge fees, or at least to include the full cost of enforcement as part of the licensing fee. I think someone else talked about that with regard to education earlier.

The grandfathering part of the bill is short on details and we would hope that you would review our bylaw and include these regulations in the final bill.

Section 105 of the Municipal Act provides an option for all dogs under a muzzle order to be subject to appeal, and such appeal would not apply to owners of pit bulls. We would hope that it would not apply to pit bulls, so you'd have to review that legislation, because currently it does apply.

The fact that the provincial bill trails behind bylaws passed by many Ontario municipalities will result in a patchwork of regulations across the province. The bill indicates that the more restrictive legislation will apply. I would encourage you to review the materials that municipalities have supplied you to date, and add to the bill the most restrictive legislation that is currently being applied and apply it consistently across the province.

On one final note, I would like to say that we in Brantford have unanimously passed a bylaw banning pit bulls from our community and would very strongly encourage you, the provincial leaders, to muster up the same political courage and do the same.

I would like to pass to Carrie to speak.

Ms. Carrie Hewitson: My name is Carrie Hewitson. I'm a constituent in Mr. Carpenter's riding. I've provided you with a white envelope with a copy of the medical report of my duration in the hospital as a result of an attack that happened here in Brantford. I've also enclosed a CD. I will warn you: it does contain graphic images of

my attack and my rehabilitation afterward. The CD is there for you to view on your own time.

I'd like to begin, if that's OK.

For those who are not familiar with me or my story, my name is Carrie Hewitson. On December 4, 2003, I was savagely attacked by three pit bulls here in Brantford. By the grace of God, the skill of the doctors, nurses, and ambulance attendants who treated me that night, as well as the generosity of those who donate blood, I survived.

Having nearly lost my life due to a pit bull attack, I look now to the positive things that have to come from such things. There has to be some light at the end of the tunnel or my daily physical, emotional, mental and psychological struggles have all been in vain.

As a result of the attack, I have been left visually impaired and I suffer from permanent nerve damage. I am horribly scarred all over my body. No area was spared, if you fully understanding my meaning. I live my life in constant fear of dogs and even contact with some people. I have problems communicating these fears and insecurities. My self-confidence and self-image are at an all-time low. I am clinically depressed and I suffer from post-traumatic stress disorder. I am unable to continue my education at this time, nor am I able to work. The horrible nightmare that I lived through consumes me and every aspect of my life, sleeping and waking. No one knows, nor can they ever understand, the nightmare that I am still living.

I was outnumbered and out-muscled. There was little the owner of the dogs could do, and help didn't arrive until it was almost too late. I never had a chance to fight back. I've been waiting for this moment—for this opportunity, for this purpose alone—to have my say and finally fight back.

1550

As I try to make sense of my ordeal, I try to make you, the public, aware of the hazards that come with these animals, of the viciousness and damage these dogs are capable of, of which I am living proof. This breed needs to be banned from all municipalities and cities across Ontario.

There are a few areas I'd like you to address.

They are a threat to public safety, causing needless injury and inciting fear in the communities where they live. Failure to take the next step and ban the breed could result in an unnecessary fatality.

I also feel that permitting three dogs of any breed in a household is encouraging a pack dynamic and pack behaviour, which worked in the favour of the three dogs in my attack, adding to their efficiency and brutality. The PowerPoint is now up, if anybody wants to see what happened.

I feel that there should be some sort of compensation for victims and their families hurt as the result of an attack, even when the owner is not charged. Costs incurred from attacks and rehabilitation afterwards can be very expensive. This is an unnecessary strain on the

victim and the family. There are no measures in place to compensate victims. Why?

The proposed fees and fines to owners are too lenient and often non-existent. They need to be increased severely to act as a deterrent to people wanting to own a restricted or dangerous breed, to make an example of those that do, and to force owners to take responsibility for an animal they are supposedly in control of.

The dogs able to remain under the grandfathering clause need to be muzzled and kept on a short leash in public. Tighter, stricter monitoring of registering and licensing needs to be in place. The SPCA, especially, needs to be more aware and more vigilant in enforcing all these laws and policies, with the consequence of higher fines and possible jail time to the owners.

I know many of you feel that emotion has no place in this argument. However, I speak not only with emotion but from experience as well. I am a young woman of 24 years and no one—no one—should have to endure what I went through and am still going through. I was lucky. Can you imagine a young child or an elderly citizen in your community having to go through what I did? The next person might not be so lucky. It might be somebody you know; it might even be you. Please don't let my attack be in vain.

The Chair: Thank you. We have time for one very brief question from each caucus.

Mr. Zimmer: I don't think there's anything that I can say or ask. You've spoken very eloquently. I think there's a lesson that we'll all take from your submission. Thank you for being brave enough to come here and tell us about it.

Mrs. Munro: I would like to echo those sentiments. Throughout the hearings we have heard a number of people who have nightmares, to have to relive and to bring those stories, those experiences, to this committee. It's very difficult, I appreciate, for you, and it certainly is for us as legislators in understanding how serious the issue is. I want to thank you for having the courage to come here today and make your presentation.

Ms. Hewitson: Thank you. This isn't easy.

Mrs. Munro: No.

Mr. Kormos: I appreciate your being here. I read the earlier part of the medical report that suggested that you knew the home and the owner of the home in which—because it says you were visiting a friend.

Ms. Hewitson: That's just the medical report. They hadn't spoken to me at that time.

Mr. Kormos: That's why I'm raising it. What was the circumstance? Was this an ambush?

Ms. Hewitson: I don't know. The SPCA of Brantford deemed it an unprovoked attack, so I did nothing to bring it on.

Mr. Kormos: No, I asked if it was an ambush—you didn't expect the dogs to be there. What was the follow-up? What was done under the Dog Owners' Liability Act?

Ms. Hewitson: Nothing has been done.

Mr. Kormos: No prosecution under the Dog Owners' Liability Act?

Ms. Hewitson: Nobody has been charged; nothing has been done.

Mr. Kormos: Do you know who the owner of the dogs is? Do the police know?

Ms. Hewitson: Yes.

Mr. Kormos: Is the person litigable in terms of being capable of being sued? Does the person have assets? No assets? That means probably no insurance coverage either, which is where you're left totally out—so no contemplation of criminal negligence charges, which we heard were utilized in other cases, so that a victim can access criminal injuries compensation.

When did this incident happen?

Ms. Hewitson: December 4, 2003. It was a Thursday.

Mr. Kormos: OK. I am shocked by the ferocity, the viciousness of the attack, but I'm also shocked by the incredible lack of—you've been all alone, perhaps short of the advocacy of your councillor. I'm shocked by the lack of participation by law enforcement people. Incredible.

Mr. Carpenter: I think there's a lack of knowledge by law enforcement in this issue altogether. Our law enforcement didn't know the process, it's clear.

Mr. Kormos: Under the Provincial Offences Act, of course, we're barred now, right?

The Chair: Thank you very much, all of you, for having come in today. Thank you especially for your very moving words.

Mr. Levac: On a point of order, Mr. Chair: An earlier deputation may have implied that Councillor Carpenter did not listen to what was going on regarding this issue, and I would like to make sure that the record is clear that Mr. Carpenter is a very well-known listener as a councillor and I would not want the statement earlier to imply that he doesn't listen.

The Chair: Thank you.

Mr. Kormos: I thought she was talking about all of us at the provincial Legislature.

The Chair: Peter, everybody knows what a good listener you are.

ELICIA YULE

The Chair: Is Elicia Yule in the room, please? Welcome this afternoon. The ground rules are really very simple. You've got 10 minutes to talk with us this afternoon. If you leave any time, it will be divided among the different parties to ask you some questions. Please begin by stating your name for Hansard.

Ms. Elicia Yule: Elicia Yule. As you can see on the front cover, I'm actually from the city of Hamilton. So I printed out from the Internet the bylaw for the city of Hamilton for you to look over, and on the second page, if you wish, you can read along with me.

Our dog was attacked by the same pit bull twice. The first instance was when our Bandit was playing with his ball at the side of the fence and the tip of his ear poked

through the fence and the pit bull next door bit it off. He went to emergency, since it was after hours, and had the tip cauterized, since they couldn't reattach the tip.

The next instance was only 10 days later, when the pit bull broke through our at least six-foot-high fence/gate and attacked Bandit, this time making his armpit look like a human's. He had to have surgery and stitches, again at emergency because it was Sunday. It took four of us—my husband and myself as well as the owners of the pit bull—to get the pit bull off Bandit.

Because the law states that a dog is to be put down after two attacks on another animal, the pit bull was picked up on Monday and destroyed. We did get paid back for the emergency visits—both trips—by the owners of the pit bull, but still Bandit wouldn't go in his own backyard for a few months after, until he knew he was going to be safe.

The female owner of the pit bull came to our door to pay us and Bandit was hiding between my legs, shaking; he was so scared of her, even. When he goes on walks, he has his guard up around other dogs, until he knows they won't hurt him. He's scared of other dogs, all other dogs. Now, is this fair that he has to live in terror every time he sees another dog? He may be a dog himself, but it's still not fair to him.

No one sees the terror in his eyes like we do. No one saw the terror in his eyes like we did while he was being attacked. The most frightening for us was the pit bull just wouldn't let go, no matter how hard we hit the pit bull trying to get him off Bandit. We didn't know if he had him by the throat; fortunately, it was his armpit.

The male owner of the pit bull had the nerve to say that Bandit bit his dog as well, on the nose. The SPCA said it was self-defence.

Numerous times we have seen pit bulls on the loose running around and I have called animal control to come and round them up. Whether they've been able to catch them or not is something I've never known. Numerous times we see children or young teenagers walking these dogs and we know that they would never be able to control them if they were to attack someone or some animal.

Something has to be done about these vicious animals, as they are a menace to society. Our vet won't even have pit bulls for patients because he doesn't trust them and knows that they have a mental problem. He doesn't know if they would turn on him or other people or other animals in the office at the same time and he just doesn't want to take the risk.

1600

Making these dogs illegal would make our streets safer for all living things. They get lockjaw, and we know first-hand exactly what that means. They do not give up or give in until who knows when. In the last instance in Toronto, it took 16 bullets to stop those two pit bulls. There's definitely something wrong with them and they do not deserve to live in our society, much like humans who behave in the same manner.

I do not take Bandit for a walk for fear of pit bulls, because I would not be able to protect Bandit, or myself for that matter. My husband even rushes home if he sees one for fear of an altercation. My aunt was once attacked by a pit bull while trying to prevent the pit bull from attacking her dog. The pit bull got away from the 10-year-old child who was walking it at the time. My aunt never found out who owned the pit bull. In another instance only a few weeks ago, my niece decided to take her dog to her dad's for the weekend. During this stay, his pit bull attacked her dog. Her father had his pit bull put down.

That's it.

The Chair: Thank you for coming in this afternoon. We've got a little bit of time for questions, probably about two minutes per party, beginning with Mr. Zimmer.

Interjection.

The Chair: Ms. Munro?

Mrs. Munro: Thank you for coming here today. I wanted to ask you if you had been here long enough to kind of get a flavour of the kinds of presentations that we have been hearing.

Ms. Yule: No. I just came here from work. Sorry.

Mrs. Munro: I certainly appreciate you doing that. But one of the things we've heard from other presenters is the whole issue of dangerous dogs and the question of other jurisdictions where they have done the breed-specific ban and then found that people feel safe now because that breed is banned, but those owners move on to some other breed. So it doesn't necessarily guarantee that in fact the streets, the parks etc. are safer.

I guess my question to you is whether you've considered that we should be looking at banning dangerous dogs as opposed to dogs that have a certain appearance; that we should be looking at the whole issue of dangerous dogs? Have you thought about that?

Ms. Yule: I would definitely say dangerous dogs, yes. Even Rottweilers are—

Mrs. Munro: Yes, because obviously there are many examples. We certainly heard deputants give experiences that would support that. I just wanted to ask you—

Ms. Yule: Yes, I could actually share an experience with a Rottweiler too. It was one down the street owned by a canine unit. My husband was out walking and their dog had gotten loose out of their yard and came charging after Bandit, who was on a leash. My husband kicked the dog in the head, to no avail; the dog wouldn't stop. I actually contacted the SPCA because the owner of the dog, a canine unit security company—my husband had said to him, "My wife's 90 pounds. If she was out walking the dog, there'd be no way she'd be able to fight him off." He said, "Oh well, the dog's insured for \$1 million."

Mrs. Munro: That's great comfort.

Ms. Yule: Isn't it?

Mrs. Munro: Yes. Anyway, I really appreciate you coming today and I appreciate your comments with re-

gard to the need to perhaps expand beyond breed-specifics.

Ms. Yule: Yes, pit bulls are definitely the most vicious, but I believe there are other ones as well.

Mr. Kormos: Thanks, Ms. Yule. This incident happened approximately when?

Ms. Yule: This happened in 2000.

Mr. Kormos: What happened after the first attack on your dog? Your dog had—

Ms. Yule: The tip of the ear.

Mr. Kormos: —the ear bit off.

Ms. Yule: Yes. I called the SPCA and made a report.

Mr. Kormos: And what did they do?

Ms. Yule: They just made the report on the dog; that was it.

Mr. Kormos: They didn't take that dog's owner to court under the Dog Owners' Liability Act to determine whether the dog was a vicious dog and should either be put down or have other restrictions put on it?

Ms. Yule: No, all they told me was that there would have to be two attacks on an animal before it would be put down.

Mr. Kormos: Did they tell you what their authority was for that? I don't know what law they're reading.

Ms. Yule: I'm not sure.

Mr. Kormos: You see, this is what rots my socks.

Ms. Yule: That's why I had stated that the law states it has to be two attacks on an animal.

Mr. Kormos: Again, in my view, a gross disservice to you, because that owner should have been brought before a J.P. under the Dog Owners' Liability Act in the first instance, to assess the level of dangerousness of this dog. Somebody else said that just a few moments ago—Councillor Carpenter. If we have animal control personnel who don't even understand the law and are giving bad advice and not serving people well, that's scary stuff.

What kind of dog is Bandit?

Ms. Yule: He's a husky-shepherd.

Mr. Kormos: I don't know how big that is.

Ms. Yule: About that big.

Mr. Kormos: But what does that mean?

Ms. Yule: Medium. He's 60 pounds.

Mr. Kormos: The pit bull is gone now?

Ms. Yule: Yes.

Mr. Kormos: What kind of dog do they have now?

Ms. Yule: None. They've moved away, actually.

Mr. Kormos: They compensated you for all your out-of-pockets?

Ms. Yule: Yes, just the emergency visits. It was \$600-some-odd.

Mr. Kormos: So they had the means, obviously. You didn't have to litigate.

Ms. Yule: No. Well, I told them I was going to if I had to.

Mr. Kormos: Of course you did, and you would have, I presume.

Ms. Yule: Oh, definitely.

The Chair: Thank you very much for having come in today.

TONY SHELDON

The Chair: Is Mr. Tony Sheldon in the room?

Mr. Sheldon, welcome this afternoon. If you have been here for a little while, you understand that you've got 10 minutes to speak with us. If you leave any time, it will be allocated to the parties in rotation for questions. Please identify yourself for Hansard and proceed.

Mr. Tony Sheldon: Tony Sheldon. During the last few weeks I have been following this in the newspapers and realized that a lot of people are lining up to support the pit bulls; I think the veterinarians and pit bull owners. I guess I'm here to speak for another group of people. I'm here to speak for my children, grandchildren, nieces and nephews.

The first issue I wanted to talk about was some type of registry. I've tried to get information on this by searching the Internet for Canadian sites specifically and, from that, I've found the Public Health Agency of Canada, PHAC, Web site. It refers to the CHIRPP, or Canadian hospitals injury reporting and prevention program, database. The CHIRPP chart shows no fatal injuries, but has the following note:

"Fatalities counted by CHIRPP include only those patients who were dead on arrival at the emergency department or who died in the emergency department. They do not include people who died before they could be taken to hospital or those who died after hospital admission."

The main quote from another site, the Canada Safety Council, was:

"Canadian Data Lacking

"Canada has no national data on canine population, dog-related deaths and injuries, or which breeds cause the most harm. In Canada, much of the insurance-related liability is borne by our health care system. Dog bites are a common reason for emergency room visits. Yet there is no mandatory reporting of these bites—not to mention the dogs' ownership, breed, spay/neuter status or history of aggression."

When you go a step further and start looking in the States, the Centers For Disease Control and Prevention, the seriousness of the pit bull or attack dog situations can be seen from American statistics. It baffles me that in all of the newspaper articles I've followed over the years, they never seem to be reported. I just wanted to do a quick summary of a few of them here.

"(1) In 1997-98, 27 people died from dog bites; 19 of them were children under 15. This is clear evidence showing that children are at the greatest risk." That's their quote, not mine.

"(2) During 1979-98, dog attacks killed more than 300 Americans.

"(3) There are 17 deaths and 6,000 hospitalizations annually from dog attacks.

"(4) Pit-bull-types and Rottweilers were involved in more than half of the deaths."

1610

This Web site, I think, shows the importance of keeping national statistics. I would like to see this committee push for a provincial database using Bill 132 and encourage Ontario to lobby for a national registry established by law here in Canada.

Reading Bill 132, I also wanted to comment on the offences listed on page 8.

Section 18(1): As a member of the public, I still do not understand the limits established for offences by Bill 132. For attacks perhaps, but in the death of a child it does not appear severe enough. Will the death of a child, then, be covered by other laws, such as in the United States, where charges of canine homicide have been used? Also, in section 18(2), there doesn't seem to be any liability or penalty for the officers or directors of corporations, although you have a penalty there for the corporation.

The only other point I wanted to mention was the area of a chain of responsibility. When you read about these attacks in the newspaper, this seems to be one of the greatest difficulties in dealing with them; that is, a chain of responsibility: Who has ownership of the dog or who is responsible for that dog? It just seems to be a laughing matter that everybody wants to protect these dogs but there doesn't seem to be anybody who wants to stand up and show ownership or responsibility for them. So I'm asking that the committee give some consideration to those points. Thank you.

The Chair: Thank you very much. We've got about a minute per caucus, beginning with Mr. Kormos.

Mr. Kormos: You're the first participant who has referred to the US "canine homicide" laws with that language, and I'd appreciate research identifying some of those jurisdictions. Other people have talked about the need for a presumption of criminal culpability, just like provincially we have a presumption of civil liability.

You heard the last two women. For one, her dog was the victim, and the other was an incredible tragedy. No charges were laid, but more importantly, no criminal charges were laid, so these people can't even access the Criminal Injuries Compensation Board.

Mr. Sheldon: I believe the last case was in California that I had been reading.

Mr. Kormos: I think that's a point extremely well made. Obviously, sometimes the sorts of people who are totally irresponsible dog owners are also the sorts of people who you can sue until you go blind and all the lawsuits aren't worth the paper they're written on because they're impecunious, they don't have resources and/or they don't have insurance. But I agree with you on both the individual directors and individual—if people knew they were going to go to jail for what their dog did, then I suspect even people who were usually irresponsible would be a lot more careful about what kind of dog they owned, what they did with it, where they took it etc. I agree with you. I think it's a point well made.

I'm looking forward to the US material you can find for us, hard-worked legislative researcher.

Mr. Zimmer: Thank you for coming in and expressing your thoughts about this and your support for the legislation. What's your general sense in the community that you work and live in from folks out there who aren't here today, just the average person on the street, in the corner store and in the school? What's your sense of their view of this?

Mr. Sheldon: I'm always asking the question and I find the polarity that I think you're finding here and that you're finding in the newspapers as well. There are a lot of people who are really against the banning of pit bulls. They don't want breed-specific laws. Personally, when I look at the damage a pit bull does by locking on, I do not believe these dogs should be in public. Yes, there are some that are pleasant pets, but so often you're running into situations where there's great difficulty.

A personal example—I call it my tiger-by-the-tail situation: I tried to stop in and pick up a morning newspaper in a mall. A pit bull was tied to a post close to the front door. OK, I walk in, no problem. Great. On the way out of this mall, stepping out of the store, I noticed down by the corner a person up with another pet. At that point, the pit bull went ballistic. The young person who had tied that dog to the post had now untied it and was holding on to it and couldn't—the fear was first of all in the lady walking the dog. But then the second situation was the fear in that 20-year-old who was trying to hold that pit bull in a public mall. It was really terrifying. He was doing everything he could to maintain that dog, and actually treating it pretty badly trying to get it under control. It's scary stuff.

Mr. Jerry J. Ouellette (Oshawa): Thanks very much for your presentation. In your presentation, on page 2 it states that pit bull types and Rottweilers were involved in more than half the deaths. How is your feeling toward Rottweilers? Should they be the same?

Mr. Sheldon: No. I really believe that you're doing the right thing in banning the pit bulls, but I think in the last presentation you were talking about dangerous dogs. I think you've got to make sure that the law is strong enough that we're making a point to all dog owners—

Mr. Ouellette: So you're saying that all dog owners—

Mr. Sheldon: All dog owners. I'm sure the way I read Bill 132 that those offences that you're talking about are for all dogs, not just pit bulls. Is that not correct?

Mr. Ouellette: The premise is mostly that the discussions are on pit bulls, mostly the ones listed out in the first pages.

What would you do with a dog that's listed in the dog books—if you can find it there, the German hunting terrier or the Jagdterrier—that's specifically stated as not being recommended as a family dog? "This dog is recommended for single individuals only."

Mr. Sheldon: I guess I've just stated my position: I would ban the pit bulls and I think that the law should be specific enough—I thought the offences covered all dogs.

Mr. Ouellette: What would you do, then—six years ago Friday last I was called to the hospital, to the emergency ward, because my son was being stitched up

from a dog attack. What should happen with that dog? It was a bite in the face and he had to be stitched up for it. That was a basset hound. What do you do in situations like that, and how do you deal with—the point I'm trying to bring out here is that individuals are concerned with dogs and vicious dogs, with the improper care and handling of dogs, but to look at it as breed-specific certainly puts the onus on one type of dog. We're hearing all kinds of examples of individuals who are taking care of their dogs properly and having no problems at all, yet they're going to be punished for the actions of this legislation.

Mr. Sheldon: I know if I were the owner of that dog, I would have that dog put down. I know that, being a member of the public, I would expect something serious done about that dog.

The Chair: Thank you for having come in today.

CITY OF KITCHENER

The Chair: Are Jennifer Sheryer and Ward McAlister in the room?

Welcome. Please sit down.

Ms. Jennifer Sheryer: Good afternoon, committee and Chair. My name is Jennifer Sheryer. I'm here for the corporation of the city of Kitchener. I'm an assistant city solicitor. This is Ward McAlister, who's a representative of our animal control services provider.

Shall we commence?

The Chair: Please proceed.

Ms. Sheryer: We'd like to begin by applauding the proposed changes to the Dog Owners' Liability Act, especially the provisions which increase accountability of owners of all breeds of dogs, the provisions that make a new and specific offence for people who train pit bulls for fighting, the provisions that allow judges more flexibility to customize orders for dogs of any breeds that have shown dangerous behaviour, and also the provisions that allow for grandfathering of dogs that are included in the new definition of "pit bull."

I'd like to speak a little bit about the grandfathering provisions. As a municipality that has been through this process, we saw the benefits of grandfathering. Owners who were able to recognize these benefits came forward and identified their dogs for us. Some owners did not come forward, and we think it's very important to educate dog owners on the benefits of self-identifying with their dogs, and of coming forward and getting the benefits of grandfathered status for their dogs.

We're hopeful that the province will assist with funding or advertising to help let dog owners know what these benefits will be. Another thing we found was that it was important to use our dog licensing records in determining where dogs that met our definition of "pit bulls" were. Many municipalities have licensing records which show the breed of the dog, as identified by the owner, and I think the province will want to definitely coordinate with municipalities and use the resources that we have to help find the dogs that you need to find.

1620

It's also important that there be education to allow the owners of these pit bull dogs that get a restricted status to know what the obligations on them for keeping that dog are. This is another thing that requires education. One thing the province may wish to consider is having some sort of registration process for the dogs that are getting the benefit of the restricted status. Three or four years down the road, it may be hard to disprove a dog existed at the time of the legislation if there's not process brought forward where those dogs are identified at the time.

Ward is going to speak a little bit about enforcement and some of the resources that the municipalities see needing.

Mr. Ward McAlister: Thank you. The enforcement aspect of the bylaw that we're working under, Kitchener-Waterloo, in reality came to, the first year, 1997, when it was enacted, pretty much one employee's time for one year. In a dollars and cents factor, by the time you put insurances, vehicles and everything else, you're looking at between \$90,000 and \$100,000 annually. Of course, over the course of the years, you can take the price of the vehicles and depreciate those down, but the staff costs are still there.

The first year when we were asked to enforce this, we were looking at 60 to 70 appeals in the course of a year. This year here, the year 2004, we've done, I believe, between 15 and 20 dog designations. My staff will not do the designation for the sake of designation. It's taken with quite a bit of thought process going into it: Does it fit the criteria? We have now gotten it down to the point where the majority of ours are upheld by the dog designation committee, which is made up of a veterinarian, city council and someone from the Canadian Kennel Club. So our job is finished when we bring that person and that dog forward. Then it's up to those three individuals or those three groups to uphold it or not. That's just the way it is. We are still now looking at doing roughly 20 a year.

With the breeds that are mentioned in here, one that has come up is the Staffordshire terrier. In Kitchener and Waterloo, we do not have that. So even though we have a mechanism in place in Kitchener and Waterloo to deal with this, it will cause more financial costs on us if we go with the breeds that are mentioned in here. When I'm saying it's \$80,000 to \$100,000 for manpower, that's for Kitchener-Waterloo, roughly 300,000 people. Multiply that by Toronto's, and you can see how much it's going to cost to enforce.

I just want to take you back to the process on how we do it in Kitchener and Waterloo. As I said before, our staff doesn't do it without a lot of forethought on it. We take in all considerations. We almost—I'm not going to say look for reasons not to, but there are some criteria that we do look for in these breeds. The purebred animals, for the lack of better terminology, are relatively easy to identify. But as this one gentleman was saying this morning with the seven breeds by four individuals, I

can see how that can happen. So there is the training aspect. Who's going to undertake the training if it does go across the province? Who's going to pay for that training? So there has to be some financial thought going into this legislation as well—actually, the “who does what.”

Ms. Sheryer: I have a few ideas for amendments or parts of the legislation that you may wish to review that I'd like to go through.

First suggestion: Councillor Vrbanovic has already addressed our city's concern with the province's definition of “pit bull” and how it includes purebred and registered American Staffordshire terriers and Staffordshire bull terriers. I'm also concerned that the definition of “pit bull” does not clearly state whether a dog that is a mixed breed, including parts of one of the listed breeds, would be included, especially where it does not necessarily show physical characteristics of one of the listed breeds. I think it's important to exclude purebred dogs of other breeds that are registered with the CKC from the definition of “pit bull.”

I'd reiterate that the definition the city of Kitchener uses has worked well now for eight years and has proven to be enforceable. I would strongly recommend that you consider using the definition we have in place. I have left, as a handout, a copy of our bylaw, which does include that definition.

Another thing I wanted to mention is that, under section 4 of the new legislation, a proceeding can be brought against an owner where their dog has bitten or attacked a domestic animal, amongst other reasons. If a judge finds that a pit bull has in fact bitten or attacked a domestic animal, subsection 4(8) kicks in. This section requires the court to make an order requiring the destruction of the dog. The concern we have is that there is no consideration here for any mitigating factors. A pit bull that was defending itself in its own yard from the attack of another dog or a young pit bull puppy in that sort of nippy, mouthy puppy stage that bites another animal would be included in this, should a proceeding be brought, and would then be ordered destroyed. Again, I ask that you consider some of the mitigating factors we've laid out in our bylaw as things the committee would consider in a designation or, in this case, that the court may consider in determining whether to order a dog to be destroyed.

Along the same lines, section 13 of the new amended legislation—this is the Dog Owners' Liability Act portion I'm speaking of—allows a J.P. to issue a warrant to seize a dog if satisfied that it is not desirable, in the interests of public safety, that the dog be in its current location. Situations where it is not in the interests of public safety for the dog to be in a place other than a pound or research facility are laid out and include situations, again, where a dog has bitten a person or a domestic animal. I'd have the same concerns with this section, that some sort of mitigating factors be considered so that a dog would not be ordered to be seized under this

legislation if it were simply defending itself or in that sort of situation.

Once this warrant is issued, the dog may be seized and then it must be delivered to the pound. If it's believed to be a pit bull, the poundkeeper must allow an owner who comes forward the opportunity to prove either that it is not a pit bull or that it is a restricted pit bull that has been kept in accordance with the conditions that apply. If this is proven, the poundkeeper can then release the dog, unless he or she believes it will pose “a menace to the safety of persons or domestic animals.” If the dog is not a pit bull, presumably it can be released by the poundkeeper to an owner claiming it during the retention period, the same as for any other impounded dog.

There are a couple of concerns here. One is that the pit bull owner is not allowed any opportunity to be heard on the behaviour of the dog once the warrant is issued and the process is commenced. There is no appeal situation or hearing situation here. Another consideration is that no mitigating factors for the dog's behaviour are considered. Finally, it's not clear what the purpose of the process is for a non-pit-bull dog if, once it's delivered to the pound, the owner can simply claim it in accordance with the provisions of the Animals for Research Act. I think that process may require a bit of study.

Just a couple of other brief issues we have while we're here as the city—

The Chair: And just to let you know, you have about three minutes.

Ms. Sheryer: Thank you. As you'll see, in our bylaw process in Kitchener, we deal with dangerous and potentially dangerous dogs, as well as prohibited dogs, which are the pit-bull-type dogs. Part of this is that we designate the dog, and the committee or the poundkeeper, depending on the time in the process, then looks at the dog and determines what conditions should be in place on that dog.

Our concern as a municipality is that, although we look after our own citizens and inhabitants well, if that dog moves across the street to Cambridge, those restrictions are no longer in place. It would be nice if we could have some sort of reciprocal arrangement or authority from the province that allowed us to recognize designations or restrictions placed on dogs by other municipalities and to in turn allow those municipalities to consider restrictions that we've placed on dogs under our bylaws in our city.

One other thing that would be of interest to the city is to have permission to proceed under both the Dog Owners' Liability Act and our own bylaw. As I said, our process works well for Kitchener and allows us to place significant restrictions on the keeping of a dog where warranted, but to be able to also go under the province's act would allow us to have restrictions placed on that dog so that other inhabitants would be protected if that dog moves from the city.

Those are just some issues that we had. Thank you for your consideration of these comments, and I would invite any questions.

1630

The Chair: Thank you very much. We've got sufficient time, unfortunately, for just the one. It's the turn of the government side.

Mr. Milloy: Thank you for coming in from the city of Kitchener. I just wondered if you could give some clarification on the decision to not have registered American Staffordshire terriers or Staffordshire bull terriers as part of the bylaw. The bylaw has now been in effect for seven and a half years. Do we have bite statistics on whether there has been any problem with those dogs that have been allowed under the bylaw?

Mr. McAlister: To the best of my knowledge, no, there haven't been any more problems with those dogs than with any other ones. The question is often asked of me, did we notice another breed come forward, i.e. the Rottweiler or beagle or whatever? No, we have not noticed one more breed taking the place of the pit bull or the pit-bull-type dog when it was moved out of Kitchener-Waterloo. We haven't noticed anything.

Ms. Shreyer: For the other part of your question, the historical decision, I wasn't with the city at that time, but I understand from people who were that the community was consulted and veterinarians were consulted. The purebred, registered Staffordshires that have the breeding, the lineage—from reputable breeders—haven't caused the problems; it was the dogs we've included in our definition that were the problem that seems to have been dealt with through our bylaw.

Mr. Milloy: Are there published bite statistics from Kitchener?

Mr. McAlister: On pit bulls, we do have them. On other breeds, unfortunately—I was speaking to our medical officer of health, and he does not have the database to indicate from back in 1997. But as to the numbers before 1997, in the two years preceding the bylaw, there were 35 incidents, and since the inception there have been eight, so the numbers have dropped off quite a bit.

The Chair: I want to thank you both for having come in. That concludes the time we have for you today.

TOM KIRBY

The Chair: Our next deputation is by teleconference from Brampton, Mr. Tom Kirby. Mr. Kirby, can you hear us?

Mr. Tom Kirby: Yes, I can.

The Chair: OK. Mr. Kirby, this is Bob Delaney speaking. I'm the Chair of the standing committee on the Legislative Assembly. We can hear you. You're speaking in Brantford before a sitting of the standing committee. You have 10 minutes before us this afternoon. Please begin by identifying yourself and proceed. If there's any time remaining, it will be divided among the parties for questions.

Mr. Kirby: Thank you, Mr. Chairman. Good afternoon, committee members. My name is Tom Kirby. I live in Brampton, Ontario. Thank you for the opportunity

to speak to Bill 132. I appreciate the accommodation of a teleconference.

The committee has heard a preponderance of material largely based on factually gathered evidence by a highly organized faction favourable to every incarnation of pit bull. I have an opposing view, and this is why:

I witnessed a pit bull crush a small dog's head in its jaws. The attack was unprovoked. Two people were out for an evening stroll with their respective dogs—for one of those dogs, the last walk it would ever have. It took ceaseless, brutal punches from the pit bull's owner to get his dog to release the other creature. This occurred in the spring some time ago on Burnaby Boulevard in Toronto. This is a highly populated residential neighbourhood. It could just as easily have been another neighbour's child that was attacked.

The legislation is not about the perceived injustice to dog owners but about maintaining public safety. We have been led to believe that, as a breed, these animals may be trained to be docile around family and friends. We have been told that it is not only pit bulls that bite, that even the most family-friendly breeds are known to have bitten or attacked family and friends. Committee members, this is the point: How can we trust a breed designed by its very nature to be aggressive, to have a tendency to be tenacious and unrelenting? Pit bulls have been bred to be fearsome when confronted and, as any pit bull owner will tell you, are disproportionately strong for their size. How can creatures bred to fight be trusted in public? I cannot believe the argument that the tendencies to be ferocious can be bred out.

The pro-pit-bull lobby will say the breed has received bad press because of a few bad owners, that it is not the dogs but these owners who are at fault. It is for precisely the same logic that civilized jurisdictions have prohibited assault rifles, people owning king cobra snakes and such exotica as is contrary to the safety of the general public.

The rights of the dog owners are being trampled? Nonsense. The rights of individuals to live free from harm are jeopardized every time a pit bull walks by. The frequency and severity of pit bull attacks far outweigh the breed's population. If we are to address this as unconstitutional, I would caution the lobby that, above all else, our Constitution is designed for our safe conduct through life. These dogs are unsafe, unpredictable and should be banned.

These dogs are a lifestyle icon. Pit bulls carry a certain cachet for members of society who wish to make a bold statement. Unlike many innocuous lifestyle pronouncements, the bearer of a pit bull has an awe-inspiring responsibility. How many owners or prospective owners are up to the challenge? How many owners themselves have the experience and training to effectively train such a volatile commodity? And how can we tell on the street if the owner of pit bull X has trained their dog with great care or has trained the dog unscrupulously? Society cannot control the owners of dogs, the same way we cannot control the owners of weapons, yet we can control the access to these things.

No apologies here. This genus was bred to fight, and fight it will. This is not a long evolutionary chain, forged through eons of natural selection, but instead a short, spiked chain hammered out in the crucible of the dog ring ratters and backstreet fight pits.

As part of civil behaviour, sociably responsible citizens must stand shoulder to shoulder and stop the absurd notion that a few people have a right to place my safety and my children's safety in check just because they want a dog.

Having said that, I suppose I represent many individuals who, for various reasons, couldn't speak today or on other days. Thank you, Mr. Chairman and committee members, for your time.

The Chair: Thank you very much. We do have a little bit of time for questions, if you'd care to entertain a few. Ms. Munro?

Mrs. Munro: Thank you very much for being able to join us here this afternoon, Mr. Kirby. Let me assure you that as a member of the opposition and as someone who has proposed a private member's bill, the issue for many of us is the question of dangerous dogs. We have heard from many—unfortunately many—who have had horrific experiences with dogs of different backgrounds. The question I would like to ask you is if you would support legislation that defines a dangerous dog as one that inflicts severe physical injury, regardless of what it looks like?

Mr. Kirby: I would have to support that, Ms. Munro, yes. I would not want legislation watered down, though. I think we specifically have to look at the particulars of the pit bull breed because, from the reading I have done, as I mentioned, they do seem to have a disproportionately large number of very severe attacks.

The Chair: Mr. Kormos?

Mr Kormos: No, thank you, Chair.

The Chair: Mr. Zimmer?

Mr. Zimmer: No, thank you. Nothing here.

The Chair: Mr. Kirby, that concludes your deputation. Thank you very much for your time.

Mr. Kirby: Thank you kindly. Goodbye.

The Chair: Bye, now.

We will wait for a minute or two while our one line connects with our next deputant, who will be joining us by teleconference from London. That's London down the road, not across the pond.

1640

HELEN KEENLISIDE

The Chair: Ladies and gentlemen, please bring this back to order.

Our next deputant, postponed from earlier this afternoon, is Helen Keenlside, who is joining us by teleconference from London.

Ms. Keenlside, are you there?

Ms. Helen Keenlside: Yes, I am.

The Chair: My name is Bob Delaney. I'm the Chair of the standing committee on the Legislative Assembly.

You'll be speaking to us today in Brantford. You're speaking to the standing committee on the Legislative Assembly considering Bill 132, and we're joined by a number of local people in attendance.

You have 10 minutes to speak with us today. Please begin by stating your name, and proceed. If there is any time remaining in your remarks, we'll divide that time among the different parties for questions. Go right ahead.

Ms. Keenlside: Thank you. Helen Keenlside is my name and I'm acting as a concerned citizen of Ontario, a homeowner and as an employee of a major landlord in London, Ontario. I'm the administration manager for Sifton Properties. Sifton built and owns, manages and maintains those same 1,000 townhouses in London. I'm the person who receives and deals with complaints about neighbours, dogs, children, cars, noise etc. We try to maintain a family-oriented neighbourhood, where adults and children can play, walk, run, feel safe and feel comfortable. We also have 600 apartment units in nine buildings. These are mostly occupied by adults, with a large percentage being seniors.

I receive complaints from time to time from people in the apartment units. If a dog is in the building and a person is expected to get on the elevator with a dog, of any size or with a threatening temperament, people have told me they refuse to get on the elevator. They will wait for the next one if they see a dog on there. That's any dog, not just a dangerous breed. Elderly people are often intimidated by dogs. They're afraid of being tripped by a leash or of somehow being knocked off balance and falling.

Back to the townhouses: The adults in the townhouses are intimidated by pit bulls and their owners. They're afraid to complain officially to me, as they are afraid of repercussions, so they do complain from time to time or they come to me after someone with a pit bull has moved out and then they tell me about their fear. However, I'm not able to take any substantial action to remove owners of the pit bulls from their townhouse because the neighbour who is living next door won't attend the tribunal to testify about their fear and intimidation. They're afraid to go to the tribunal to testify, even though it would only be maybe two or three weeks before the pet owner would have to leave.

So this is a Catch-22 that leaves the landlord helpless in taking any meaningful action to maintain a family-oriented neighbourhood where these people can feel safe and comfortable.

I do have just four hopefully quick stories. How am I doing for time?

The Chair: Just fine. I'll give you about a three-minute warning.

Ms. Keenlside: Thank you.

After one pit bull owner moved out, I heard stories about an adult female tenant who was walking with her little white, fluffy lapdog. Suddenly the pit bull appeared, bounding toward them. They were chased into a neighbour's patio area where the owner of the little dog was hoping the neighbour would be home to provide refuge.

By some miracle of fate, the pit bull decided to stop pursuing her and her pet. As it happened, the neighbour where she sought refuge was not home. This story could have had a very different ending. But again, she didn't tell me that until the pit bull and his owner had moved out.

Another instance: A young couple moved in after telling us they didn't have a dog at all. Their application was accepted with that stipulation, but within a few days they brought in their pit bull to live with them. The next door neighbour called me frantic and almost hysterical. In response to that, I discretely—at least, I tried very hard to have a discrete conversation with the new people and asked them to find a new home for their dog as we had not agreed that it could come there and we would not have accepted their application if they had been honest with us. I did not indicate in any way who had complained, but when the young man, the pit bull owner, came home from work that evening, he went door to door and he confronted each neighbour. Everyone, including the person who did complain to me, denied having called me. But needless to say, the lady, who was already terrified, was feeling even more threatened when she called me the next day. However, she was adamant with me that she would move before she would ever take the stand at a hearing with the tribunal or let her feelings be known about the pit bull owner.

A third story: Recently I was in my car. I was just at the corner where my workplace parking lot and the walkway to the city of London park meet. I was shocked to watch a young woman undo the lead from a pit bull. She was walking her dog. She patted the dog on the hind-quarter as an indication it could now go for a run, which it did. This is a walkway where people are often seen walking children in strollers or walking small dogs, or even other large breeds of dog, but on leashes. Other young people often roller blade on that same walkway.

I can't emphasize enough the empathy I felt at that moment for my tenants. There was no way that I would ever consider approaching a pit bull owner, even if she was female and, as a person, would not have been a threat to me personally. I would not have approached her because I was afraid of what the dog may do to me if the dog perceived that I was somehow having a confrontation with the owner. So all of a sudden, I had a personal experience of the fear that a lot of tenants who have talked to me have expressed.

My fourth story: After another owner of two pit bulls moved out, we found the dogs had chewed or clawed a large hole through the basement door. That's not just a pit bull; that can be any large dog, but it does, to me, indicate aggression. There were other major damages in that unit, but this was obviously from the dogs.

I urge you to continue your quest to ban pit bull terriers and maybe even Rottweilers. By their reputation and because of media coverage, where a pit bull does maul, maim and sometimes kill a child, these dogs do frighten people, and I hear from these people fairly often. I also urge you to pass legislation that would require

owners to muzzle their dog if it has ever bitten anyone, and that would be any dog, not just pit bulls.

The Chair: You have just under three minutes left.

Ms. Keenlside: OK. Thank you.

I also urge you to pass legislation that would enable municipalities to use heavy fines as a deterrent to letting a dog run off-lead in a public or unfenced area.

In conclusion, until some meaningful legislation is passed, I'm not able as a landlord's representative to take the necessary steps to protect my tenants and to ensure safety to their children and families. That's because in London there's no municipal bylaw that allows me to protect my tenants from dangerous breeds of animals, at least not at this time.

Thank you. That concludes my presentation.

The Chair: Thank you for appearing with us by teleconference today. We'll have time for just one very brief question. Mr. Kormos?

Mr. Kormos: No, thank you, Chair.

The Chair: Mr. Zimmer?

Mr. Zimmer: Nothing, thank you.

The Chair: Mr. Miller?

Mr. Miller: Thank you very much for participating today. I guess one of the questions I have is your definition of "pit bull." In Bill 132, the bill we're talking about, the definition of what a pit bull is has been discussed by a lot of people, and questioned. How do you describe a pit bull?

Ms. Keenlside: I would expect that it's the American Staffordshire terrier.

Mr. Miller: OK. Because it is described different ways in different places. As you're probably aware, a pit bull is not a specific breed of dog. For the definition, for example, in Kitchener, they've excluded purebred Staffordshire bull terriers or American Staffordshire terriers that are registered with the American Kennel Club or the Canadian Kennel Club. There is a real problem. We've had some people come before us and show dogs that are of mixed breed and had real problems in identifying just what a pit bull is.

You've mentioned other dogs like Rottweilers.

Ms. Keenlside: Right.

Mr. Miller: We've also heard from other jurisdictions that have been very successful in dealing with dog bites. Calgary seems to be the biggest success story in the country. They don't deal with a specific breed; they deal with all dogs and have quite comprehensive rules in terms of leashing, licensing and many other controls. Do you not think it makes more sense to deal with all breeds versus one that's hard to identify?

Ms. Keenlside: I think it's important to address the safety issues for everyone, no matter what the breed is. Even if a tiny little dog has bitten, I think we need to be protected from the second bite, because if it bites a child on the leg, that could cause a fair bit of damage.

When you look at the media reports, I think that's where the fear comes from in people. Over and over again, it's a Rottweiler or this thing called a pit bull. Yes, you're right; it's not a breed. Perhaps Rottweiler, Amer-

ican Staffordshire terrier and Doberman are the three breeds that can kill. As such, with that potential—I don't want to tell you how to write the legislation. All I'm saying is that those particular breeds, the terrier and the Rottweiler, are the breeds that strike fear in people's hearts. That's because of media attention. I'm not blaming the media in any way. I think it's important that they advise us of these things so that we can be careful and protect ourselves.

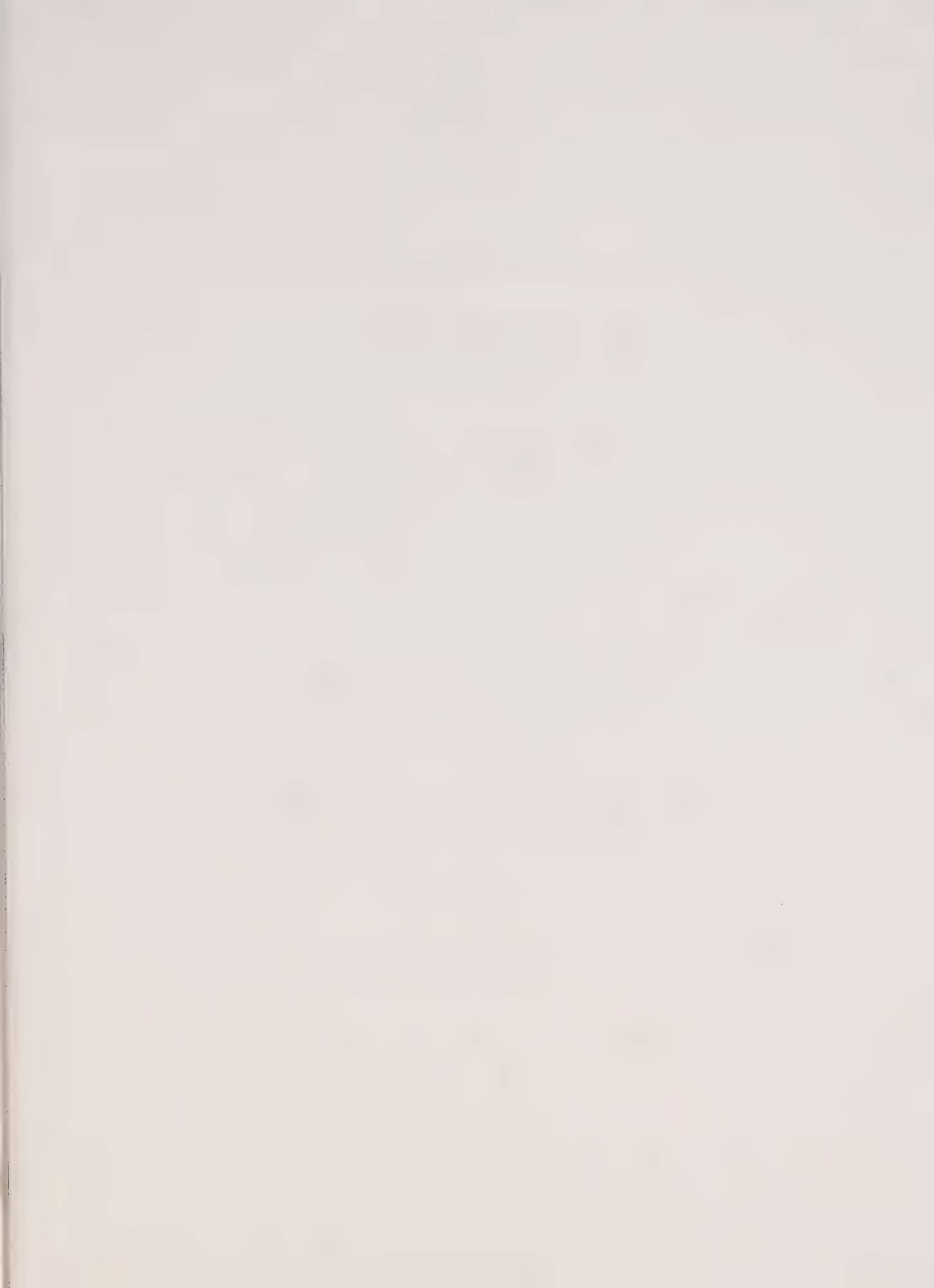
The Chair: Thank you very much, Ms. Keenlside. That concludes our time for your deputation. Thank you so much for calling in.

Ms. Keenlside: You're very welcome. Goodbye.

The Chair: This concludes our third day of hearings. Though we've heard a broad range of opinions on Bill 132, one constant is that people love their pets with a strong passion. These hearings are advice to the Ontario Legislative Assembly, and I know all of us here are united both in our respect for animals and our desire to listen to the best advice our deputants can bring us. So I want to thank everyone who came today and certainly those of you who came to present to us.

These hearings are now adjourned and will reconvene on Thursday, February 3, in Toronto.

The committee adjourned at 1654.



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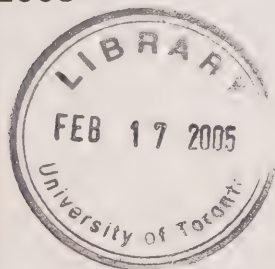
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Standing committee on the Legislative Assembly

Public Safety Related to Dogs
Statute Law Amendment Act,
2005

Comité permanent de l'Assemblée législative

Loi de 2005 modifiant des lois
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 3 February 2005

Jeudi 3 février 2005

The committee met at 1001 in Room 228.

The Chair (Mr. Bob Delaney): Would the standing committee on the Legislative Assembly please come to order. Good morning, everyone. Welcome, and to some of you, welcome back. We're here for the fourth of four days of consideration of Bill 132, Public Safety Related to Dogs Statute Law Amendment Act, 2004.

SUBCOMMITTEE REPORT

The Chair: First off this morning, we have a report of the subcommittee to amend. Can I have someone read this into the record, please?

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): I'll read it, because I'm on the subcommittee. The report of the subcommittee reads as follows:

Your subcommittee on committee business met on Friday, January 14, 2005, to consider the method of proceeding on Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act, and recommends the following:

(1) That the subcommittee determine on a case-by-case basis whether to grant requests by witnesses for reimbursement of their reasonable travel expenses.

And I would move that.

The Chair: Mr. Tascona has moved the adoption of the subcommittee report. Those in favour? Opposed? Carried. Thank you.

PUBLIC SAFETY RELATED TO DOGS
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI CONCERNE LA SÉCURITÉ
PUBLIQUE RELATIVE AUX CHIENS

Consideration of Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act / Projet de loi 132, Loi modifiant la Loi sur la responsabilité des propriétaires de chiens pour accroître la sécurité publique relativement aux chiens, y compris les pit-bulls, et apportant des modifications connexes à la Loi sur les animaux destinés à la recherche.

STATEMENT BY THE MINISTER
AND RESPONSES

The Chair: Our first deputant this morning is the Honourable Michael Bryant, the Attorney General of Ontario. Mr. Bryant, welcome this morning. You have 20 minutes to address the committee; if you choose not to use the entire 20, the time will be divided among the parties for questions to you. The time is yours; please proceed.

Hon. Michael Bryant (Attorney General, minister responsible for native affairs, minister responsible for democratic renewal): Mr. Chair, will you let me know if I get close to my time? Are you ringing bells or waving things or turning off the mike when it's all over?

The Chair: I'll give you a very gentle verbal warning at about three minutes.

Hon. Mr. Bryant: Perfect.

I want to thank the Chair and all the members of the committee, officials of the Legislative Assembly, government officials and the officials of the opposition and the third party for the work they put into this set of hearings. It is a remarkable set of hearings. I want to thank, above all, the people who attended here—perhaps some of the people sitting behind me right now. Some have made submissions; some have simply sat and watched and commented. I regularly receive e-mails and commentary on what has been going on, and of course I've been following the hearings closely through Hansard and otherwise.

The level of participation in this consultation is in some ways quite remarkable. I'm sure there may have been, when I was in opposition, four days of public hearings on a particular matter, but I don't remember that ever happening. It seemed to be zero, or one at most. I get helpfully mocked sometimes by the official opposition House leader, who wonders how on earth I managed to find four days of public hearings on this matter. But the answer is that people want consultation on this, and any question there may have been about the level of consultation on this bill is answered with these very extensive public hearings. Many of the people who have appeared before this committee I have met with, or they have met with members of the committee or with my officials or with MPPs. We've heard their submissions for four days, and then we will have another day for clause-by-clause.

I want to thank all the people who participated, whether you agreed with me or not.

Special thanks to the Ontario SPCA. We met with them in the fall to have preliminary discussions. We also shared a draft bill with the Ontario SPCA. They put a significant amount of work into this bill. I understand they don't support the banning of pit bulls, but nonetheless they did participate in this bill quite substantially, and it was acknowledged by Mr. Draper in his submissions before this committee.

References to tying the prohibition to future dog ownership offences, including inspection provision to ensure that orders made under the bill are complied with, the inclusion of corporations in the fine provisions, court orders following conviction under the DOLA following an owner, and many other provisions, all of which were proposed by the Ontario SPCA, were adopted in total or essentially adopted in the government bill before you now. They played a significant role in assisting us in making the bill better.

The Ontario SPCA also came to the government with a concern about funding pressures on the OSPCA. The McGuinty government has heeded that call. We have approved very significant funding to be provided to the Ontario SPCA. The money will be coming out of the existing budget of the Ministry of Community Safety and Correctional Services. The provision of this new funding to the OSPCA will constitute increased support for animal control activities in the province. Credit has to be given to the Honourable Monte Kwinter, who championed this in particular and from whose budget the funds flow. This is good news for the OSPCA. I think it is good news for animal control activities and municipalities alike across Ontario.

Of course, the Ontario SPCA was not the only participant. There was very emotional testimony from victims who would never have dreamed of coming in front of cameras and a microphone to tell a very horrible story in their life. I can't go through all of them now, because there were many and I won't do justice to their presentations. They speak for themselves. There were very emotional pleas from those who either make it their business to breed pit bulls or who own pit bulls or who don't own pit bulls but feel very strongly against breed bans.

I found much of the testimony to be inspiring. I confess I found some of it to be curious. I'm not sure what to make of the submission of the Humane Society of Canada that an attack by a chihuahua on the street is not qualitatively different from an attack by a pit bull. I'd remind committee members that a pit bull fatally wounded a chihuahua in Toronto this last November.

There were also comments that I think were just wrong and inappropriate and intemperate, particularly given the recent anniversary of the Holocaust. I know we know what comments we're talking about, and I know members have spoken out against them. I don't think anything more needs to be said.

1010

The substance of this bill, on the breed ban, is in some ways about nature versus nurture. Where do we determine the locus of the problem? Is it the nature of the dog or is it the way in which they are cared for? It is almost a theological argument, and I'm not exaggerating. It is certainly a philosophical argument, and it is one on which reasonable people can disagree. I don't think anybody has a monopoly on the answer. I will say that Germany, France, Denmark, the Netherlands, the United Kingdom, some US states, cities like Winnipeg and Kitchener and now the executive council of Ontario are of the view that pit bulls are inherently dangerous and that no matter what the nurture, they pose too great a risk to public safety—too many victims, too great a risk—and therefore over time we need fewer pit bulls, and that will mean fewer pit bull attacks.

Now, I don't think I'm going to get agreement from Mr. Kormos on that particular point, but who knows? He's still deliberating, I think. I'm not sure. But I do want to comment on two arguments made by the Ontario SPCA, and I think Mr. Kormos has made them as well in his remarks, regarding the issue of the effectiveness of the breed ban and the issue of the humanity of this particular approach.

First, the effectiveness: Nothing is more effective than eliminating the animal that is causing the harm over time from the community. Fewer pit bulls are going to mean fewer pit bull attacks. Fewer pit bull attacks mean fewer people victimized by pit bulls. That is effective. It is rationally coherent. If you, over time, eliminate the dog causing the bite, over time you will eliminate the bite.

That has been the experience in Winnipeg in particular over the past 15 years. Pit bull attacks dwindled from about 30 a year to none. Likewise, serious attacks by all breeds of all other dogs stayed more or less level at four or five a year. In other words, people didn't replace the pit bulls with other dangerous breeds, so the number of serious attacks declined overall. Dog bites overall are also down by about half in Winnipeg, according to the officials we spoke with, from 310 per year down to 150. Again there in Winnipeg, no more pit bulls, fewer attacks, fewer victims, increased public safety.

Then the issue comes down to this one of humanity, which for dog owners and lovers has been an excruciating one, particularly when many, many, many people with a great emotional investment in this subject, involved in humane societies and otherwise, are aware that there is some kind of problem with pit bulls and yet they can't, in their heart of hearts, say it is humane to support a breed ban.

Under Bill 132, if passed, for the responsible owner of the pit bull, nothing really changes. That dog is muzzled and leashed, neutered or spayed. That pit bull will live happily ever after and finish off its life in Ontario. That's the way the act works. I think everybody understands or should understand by now that that is how the act would work: It would phase in the ban.

But what of the rest? What if there weren't any pit bull ban? Let's consider the humanity of that. I'd like to turn the humanity argument on its head in this way.

Consider the submission of the Ontario Veterinary Medical Association. Mr. Zimmer asked if it was harder to adopt out a pit bull than a spaniel. Dr. Zaharchuk said, "My guess would be that in fact it would be." "Why?" he was asked. "Well, people think there's a problem there. There's no question that adopting out a pit bull is more difficult than adopting out other dogs."

The Toronto Humane Society testified, and Mr. Zimmer asked, "In the year 2004 you took in 2,311 dogs. How many were pit bulls?" "About a quarter." Then Mr. Trow went on to clarify his answer. He said, "Look, at any given time about a quarter of the dogs in the shelter are pit bulls. It's simply that the other dogs get adopted much easier. We have difficulty getting these pit bulls adopted." One out of four dogs in the Toronto Humane Society shelter is a pit bull. Perhaps that is more or less reflective of dog pounds and humane societies across the province.

My conversation with the Ontario SPCA last fall, before any decisions had been made, was that even before there was a discussion of a pit bull ban, there was no doubt that there was a disproportionately high number of pit bulls in the humane societies and in the pounds across the province, for the same reasons: They were difficult to adopt out, and they were being dropped off by people who may have bought and raised the puppy but the dog had turned into something they didn't want to have in their house any more.

Without this legislation, we have an increasing number of pit bulls living out lives in the humane societies and the dog pounds of Ontario. Some will live out their entire lives there and some will be put down because they are unadoptable. That will depend upon the policy of the particular humane society. Where is the humanity in that, I ask? An increasing number of a particular breed making up a disproportionately high number of dogs in the humane societies and dog pounds, living out their lives in these shelters or being put down because they are unadoptable: Where is the humanity in that?

Consider the aforementioned pit bull and chihuahua in Toronto that had a confrontation. The chihuahua died. The pit bull was put down within two days. Two dogs alive one day; two days later, two dead dogs. Where is the humanity in that?

Consider the victims of pit bull attacks, and the pit bull is often put down after the attack. The victims themselves have told stories of what has happened to them. We know of a person who went into intensive care; we know of people who still wear their scars; we know of a postal worker who lost her ear. But more often than not, afterwards that pit bull is also put down. Where is the humanity in that?

I ask you to imagine a situation 10 years from now without Bill 132, without the pit bull ban. I envision an increasing proliferation and population of pit bulls. There is no doubt in my mind—and we haven't heard anything

to the contrary from any of the veterinarians or humane societies—that the pit bull population will increase. Explode? I don't know. But it's increasing, maybe slowly. Even if it stays the same, we have a situation 10 years from now where our humane societies and dog pounds are bursting at the seams with unadoptable pit bulls that are living out their lives in the humane society or dog pound or are being put down. Over 10 years, that's a lot of dogs living in humane societies and that's a lot of dogs being put down.

You also have increased victimization of other pets and people by the pit bulls. We've seen the pattern and we've seen the incidents. That has happened and will continue to happen. Where is the humanity in that?

Or, I submit to the committee, with a phased-in ban, we will have fewer victims, fewer injuries to pets and humans alike, and, over time, fewer and fewer pit bulls in the humane societies and dog pounds because, as fewer are born and imported into the province, fewer go to the humane societies and dog pounds. And with it, you get the freedom of those who do not own pit bulls to enjoy their streets and parks and fields and backyards without the possibility of a pit bull attack taking place against them, their child or their pets. I say that is a humane result for all concerned.

So what of the rest of the bill?

1020

The Chair: Minister, you have your three-minute warning.

Hon. Mr. Bryant: I note the comments of Dr. Richard Meen from the Canadian Dog Judges Association and the remarks of the Canadian Kennel Club representative, Lee Steeves, to the effect that the dangerous dog provisions dealing with everything but pit bulls are very positive and a positive step forward. I will leave it at that.

On the issue of definition, if breeds can be defined and similar breeds can be distinguished, our kennel clubs do it all the time; our judges and prosecutors will be able to do it. The definition we are using is the one from Winnipeg and it has worked successfully for the last 15 years. That said, we are in committee. If people have suggestions as to how to improve the definition, of course this is the place to discuss them.

Lastly, on municipal costs, there are a number of new revenue opportunities that arise from this bill through the provision of fines. I also remind the committee of the new contribution to the Ontario SPCA to be provided by this government to deal with possible increased costs.

In the end, this is about public safety. After-the-fact punishment or training can't take away the injury to the person, can't give back that postal worker's ear, can't take away the scar from that young girl's face and can't take back from the grave the dog that was killed by a pit bull. This is the way to deal with a dog that is, was trained to be and has become inherently dangerous. In the name of public safety, and only in the name of public safety, I submit to this committee that this bill deserves the attention, support, perhaps amendment where you see

fit, and I look forward to your comments in the minutes and hours ahead. Thanks, Mr. Chair.

The Chair: Thank you very much, Attorney General Michael Bryant.

We have a statement from the official opposition, Mr. Tascona.

Mr. Tascona: Do we have extra time from what he used?

The Chair: You have 10 minutes.

Mr. Tascona: In 1987, the Liberal government's Solicitor General responded to an opposition MPP's request to strengthen the Dog Owners' Liability Act, particularly incidents involving pit bull terriers and vicious dogs. The Solicitor General's answer in the Hansard of November 9, 1987: "First, I would like to point out that it is the opinion of the committee that was formed that we should be discussing vicious dogs, rather than pit bull terriers, as it becomes very difficult to prove in a court of law that a pit bull is ... a pit bull. A lot of time and energy could be wasted in a court as to whether it is a pit bull, so we prefer to address the matter of vicious dogs per se since it really does not matter which breed of dog commits a vicious act."

The Solicitor General stated that three ministers put forward recommendations for cabinet consideration: "The two chief differences would be increasing the penalty and expanding the power of municipalities to tighten their laws." After hearing from municipalities, we will "act upon this."

No action was taken by the Liberal government to better protect the public from vicious dogs at that time.

On October 26, 2004, almost 17 years later, the Attorney General for the Liberal government introduced Bill 132, which contains provisions for banning pit bulls and, to get around the evidentiary problems of what a pit bull is, inserts in Bill 132 an overly vague definition of "pit bull" and a reverse-onus provision in the identification of a pit bull. Both provisions—subsection 1(2) and section 19—will likely face a Canadian Charter of Rights and Freedoms challenge in the event Bill 132 passes in its current form.

So the Liberal position on a pit bull ban changes, but that's not news, as Liberals are known for changing their position. However, the Liberal government's failure to address vicious dogs is not. Our job as the official opposition is to make sure the law is clear, effective and credible, and ensure Bill 132 addresses the public desire to stop attacks by vicious dogs. Bill 132 fails on all four counts. In our opinion, Bill 132 is unworkable.

The Attorney General has adopted a policy of a one-sided breed ban: pit bull. It is an experiment, this breed ban, we are told, which had to be, to use a vulgarism, tried out. This breed ban experiment has been tried out in Italy, and 92 dogs now are on the dangerous dog list.

If breed is the real issue, then why didn't the Liberal government worry about breeds that were initially bred for fighting and have inherently aggressive and possibly dangerous characteristics? Modern fighting dog breeds include the Great Dane, the boxer, the Mastino Napoli-

tano, Dogo Argentino and pug. Why didn't they find their way on to the provincial banned list?

I suspect, though, and the Attorney General denies it, that the pit bull breed ban experiment will be used again on other dogs. Why do I say that? (1) The Attorney General's claim that pit bulls are categorically more vicious than other dogs such as German shepherds, Rottweilers and Dobermans is without merit; and (2) vicious dog attacks will continue because Bill 132 is flawed. It is unworkable.

What have we heard in the public hearings to date?

(1) The Attorney General's failure to consult stakeholders and essentially the government's attitude with respect to people who are against their position. During the Barrie hearings, we saw first-hand the compassion that your government has for non-pit-bull bite victims. Michelle Holmes, a registered veterinary technician, talked about being bit by a chihuahua. I'd like to read you their exchange from Hansard:

Ms. Holmes: I have never, ever been attacked by a dog such as a pit bull. I have been bitten by a chihuahua, but we don't seem to be concerned about those....

Mr. Zimmer: Did the chihuahua take your leg off?

Ms. Holmes: No, but he did draw blood.

Mr. Zimmer: So does a mosquito.

So I say to the Attorney General, why is your government only concerned about pit bulls? I would bet that if your child was bitten, it wouldn't matter to you what breed it was, nor to me.

(2) There's a public misperception that the pit bulls will be gone from our streets when Bill 132 is law. Pit bulls will still be on the streets when Bill 132 is law.

(3) People want protection against vicious dogs per se, not just pit bulls.

To the Attorney General, we say we all listened to the experts and experiences in other jurisdictions, and they say this legislation will not work. Breed-specific bans fail to address the real problem of irresponsible breeders and owners who breed and sell aggressive dogs.

(4) We need to strengthen the Dog Owners' Liability Act to promote responsible dog ownership and punish irresponsible dog owners. Bill 132 is totally silent on that.

(5) The establishment of a bite registry across Ontario in order to keep track of dog bite incidents: Bill 132 is silent on that.

(6) We heard from municipal officials in bylaw enforcement who oppose Bill 132 because what they need is better enforcement tools and the resources to do so.

(7) Determining the dog's breed is not the exact science the Attorney General would like to try to prove to us, so Bill 132 will use up a lot of court time and energy. As the Attorney General knows, this has been done in the United Kingdom and we've been hearing time and time again that this legislation is unworkable. Pit bull bans have been a failure in the United Kingdom, and in the United States, 13 states have specifically prohibited the bans. The Attorney General has not told us how he will

manage any court challenges with respect to the breed-specific ban.

(8) Where municipalities banned pit bulls, the number of dog bites increased, specifically in Winnipeg. So the public was no safer from vicious dog attacks.

Today is the last day of public hearings. A new approach to protect the public from vicious dog attacks must be taken, but a breed-ban experiment based on a fallacy does not need to be tried out through Bill 132. Policies subjected to experiments are wrong, utterly foolish and should never be used. Bill 132 is unworkable.

Julia Munro, who sits beside me, has put forth a private member's bill on vicious dog attacks, and I would suggest to the Attorney General that that's the right approach. So I say to the Attorney General—

The Chair: Mr. Tascona, you have about three minutes.

Mr. Tascona: —will you consider Julia Munro's private member's bill, which takes into account the experts and the experiences of other jurisdictions? This bill amends the Dog Owners' Liability Act to create a specific category: vicious dogs. It is a workable alternative to the Liberal government's irresponsible breed-specific legislation.

1030

Mr. Peter Kormos (Niagara Centre): First, I want to make it very clear that I don't approach this issue with any anthropomorphic sentimentality, nor do I have any particular affection for any particular breed of dog. As a matter of fact, when I was a kid in the 1950s, there were just dogs. I didn't know about purebreds until literally decades later. There were dogs. There were big ones, small ones, short-haired ones and long-haired ones.

I want to tell you, Attorney General, that we heard shocking evidence from victims of vicious dog attacks. We read shocking evidence from victims of vicious dog attacks. We read shocking evidence about other victims who didn't appear, including, of course, the revelations and the conclusions reached in the Courtney Trempe inquiry.

But more shocking than some of the incredible physical and inevitably psychological harm inflicted on victims by vicious dog attacks—yes, colloquial pit bulls, but Rottweilers, mastiffs, Dutch shepherds down in St. Catharines just a couple of weeks ago; they're a variation of a German shepherd. More shocking, across the board, was the failure of authorities to enforce the Dog Owners' Liability Act. My colleagues here will understand and recall what I'm speaking of. Witness after witness who has been victimized, when questioned about what happened as a result of this, indicated that there was no investigation; a charge or charges were not laid under the Dog Owners' Liability Act. As you know, the remedies available to a court are broad-ranging, including ordering the euthanizing of a dog.

That was an incredibly disturbing observation. It was across the board, I'm sure with some exceptions: the failure of authorities to respond to these vicious attacks and to deal with the dog and its owner. In fact, we heard of

one instance where, had the authorities dealt with it—you will recall that; there was an attack by a dog on another dog—the second attack inevitably or in all likelihood would not have occurred, had the Dog Owners' Liability Act been given effect. That, I tell you, should be much more the focus of our consideration here than a particular breed.

My concern is this: We heard an incredible wealth of evidence about what it means to be a responsible dog owner. The world has changed; this stuff didn't exist when I was a kid in the 1950s or when you were a kid in—what?—the 1970s. This stuff didn't exist. We heard an incredible wealth of evidence about the need to have your dog participating in training, about the need to understand animal behaviour, at least at a basic level, to be able to read your dog. Mike Martin made reference to a formula, a scale that's available to determine the temperament of a dog of any breed. We learned that it's incredibly important that any dog owner should have their dog spayed or neutered, unless they're a breeder or unless it's a show dog. The fact is, owning a dog in this world has become more and more complex than ever before and, I suppose, more expensive than ever before.

I put this to you: There was some significant evidence that purebred dogs bred by legitimate breeders—legitimate breeders have no interest in breeding a vicious or mean dog; it's contrary to their interest—are *prima facie* safer dogs. That's one of the rationales for neutering your dog as a pet, regardless of its breed. The effect of neutering a dog as a pet will, in fact, eliminate mongrel breeds in due course.

My concern is that if the focus is on pit bulls, and pit bulls happen to be the vicious dog of the month, of the year—well, it's true. A couple of decades ago, it was German shepherds, and then it was Dobermans. It happens to be pit bulls right now. Pit bulls, I acknowledge, at least insofar as the media portrays them, happen to be the dog of choice that illegal biker gang members, drug dealers, street kids, if I dare put them into one lump like that, and other types are attracted to, for any number of reasons, which unfortunately this committee didn't have a chance to investigate with expertise—mean pit bulls. But we also heard from owners of pit bulls like the veterinarian yesterday. She described pit bulls that don't possess any of those characteristics that were displayed by the pit bulls along with other vicious dogs that attacked innocent victims.

Much focus has been placed on identifying a pit bull. It's as much a colloquial term as anything else, especially as compared to a breed. I say, yes, let's address vicious dogs in a very serious way. But I say this to you: If we focus on pit bulls, we may well miss the boat and do a great disservice to people out there across Ontario. If all of these scarce resources and energies are focused on identifying pit bulls to begin with—or read the evidence of Mr. Mike Martin yesterday—if all of the focus is on identifying pit bulls and culling them, then I say to you there are scarce resources, if any, left to address vicious dogs of other breeds. It's of no comfort to a kid in my

community if pit bulls are banned if that kid is then mauled or killed by a vicious dog of another breed.

And please, I'm not talking about damned chihuahuas. At the end of the day, if I'm going to be bitten by a dog, I'd prefer to be bitten by chihuahua, which I can more readily sweep aside, than by a Rottweiler, German shepherd, pit bull, any number of breeds which are larger and inherently more powerful. Give me a break. Let's not muddle. Come on, let's be fair and honest about this. Let's not muddy the argument.

I'm saying this to you: As I said yesterday on behalf of the NDP, we are deadly serious about developing a regime in this province that will protect people from vicious dog attacks. One, there's no data in the province of Ontario and scarce data from many other jurisdictions, and the debate is as much about the validity of the claims made by people in Winnipeg or people in Kitchener-Waterloo as about anything else. All of the expertise but for one Professor Alan Beck with the one-liner, like the blurb on the back of a paperback just published, all but for Professor Alan Beck, all of the expertise—

The Chair: Mr. Kormos, you have a little less than three minutes.

Mr. Kormos: Thank you, sir. All of the expertise says breed-specific bans are an ineffective course to travel. I'm not being overly sentimental about pit bulls or any other breed of dog. I'm talking about creating a regime, a province wherein—you're right—people can walk down the street or visit a home, a mail deliverer can knock on the door of a home or, quite frankly, any one of us canvassing in the next election or the election after can do the same without fear of being attacked by a vicious, poorly bred, ill-trained or untrained dog.

Let's ban not just training dogs to fight. Let's restrict to the proper authorities training dogs to be attack dogs or literally guard dogs. Let's impose real requirements to neuter all pets, regardless of whether they're mongrels or pure breeds, other than animals that are kept for breeding or show animals. Let's talk about a licensing regime that's effective. You know darned well, as I do, that only a handful of dogs across the province are actually tagged or licensed at any given point in time. Let's acquire some real data. Let's not create the same crisis as the feds have created, because, let's face it, legitimate, bona fide, good pit bull owners are going to deliver their pit bulls up, and biker gangs, narcotics dealers and other low-life are not. They'll continue to breed the damned things, the mongrel colloquial pit bulls that are bred to be dangerous.

So you eliminate the breed-specific identifications. Let's eliminate the purebred American pit bull—no evidence whatsoever that that's the sort of dog that has been problematic—the two Staffordshires.

I'll tell you this: You eliminate the breed-specific portion of this, we'll go back into that Legislature on February 15 and New Democrats will co-operate to pass this bill in one day, the time divided equally so we can get down to really protecting people in this province from vicious dog attacks and from bad dog owners.

The Chair: Ladies and gentlemen, thank you very much. This committee will be in recess for five minutes.

The committee recessed from 1038 to 1045.

TORONTO POLICE SERVICE

The Chair: Ladies and gentlemen, please take your seats and come to order. Committee members, thank you for being seated. I hope everybody's taken the advantage to get something to drink, get a little bit of an oxygen break or whatever.

Our next deputation will be from the Toronto Police Service. Our deputant is Toronto's Chief of Police, Julian Fantino. Welcome.

Mr. Julian Fantino: Thank you, sir.

The Chair: Chief, you've got 15 minutes. You can use as much of it as you wish; you can use all of it, if you wish. If you have any time left, it will be divided among the parties for questions to you. Just begin by stating your name for the purposes of Hansard and proceed.

Mr. Fantino: My name is Julian Fantino. I'm the chief of police, city of Toronto Police Service. I am indeed pleased to have been asked to appear before the committee debating Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls.

This legislation has been spearheaded by Minister Michael Bryant, Attorney General of Ontario. I would like to be on record advancing my congratulations to the minister publicly for his commitment to improving public safety through the swift consultation process and the introduction of this legislation.

During the consultation phase, the Toronto Police Service was pleased to participate in those discussions. Two of our dog service officers attended the round table discussions and were pleased to provide their input and learn from other participants. These officers know better than anybody that appropriate and consistent training is essential for any breed of dog. However, they have also experienced first-hand what can happen with predatory-type dogs, regardless of their training or circumstance. These officers have seen the utter viciousness and severe rage with which these dogs attack.

I'm sure the committee has already heard from members of the public who have been victims of pit bull attacks, and I'm sure the committee has already heard from animal experts who will state that the problem with dog attacks is not entirely a pit bull issue but rather a dangerous dog issue that involves many breeds.

I'm here to support this legislation for two reasons. It will improve community safety and also police officer safety.

Many people consider these dogs to be wonderful house pets. But I can tell you from our experiences that these dogs are used as weapons. To say they are being used as guard dogs is an understatement. Pit bulls are the dog of choice for many criminals. Our officers have had to deal with some very dangerous situations where pit bulls are being used by criminals for the purpose of their

own protection, facilitating their own escape or protecting their illegal enterprises.

For instance, in May 2004 our service participated in a very large and complex takedown of a group of individuals known as the Malvern Crew, a very violent street gang in the city. This project, referred to as Project Impact, was over a year in the making and, at the end of the day, resulted in some 65 people being arrested, with over 500 criminal charges laid against them. Clearly, this was a very dangerous and high-risk takedown that involved our officers.

1050

One particular location presented an additional challenge. As our officers were attempting to execute a search warrant, they were attacked by a pit bull that had to be shot by officers on the scene. It is always an unfortunate case when our officers have to shoot an animal, but the safety of our officers is the primary consideration. As I indicated, the pit bull was shot.

Project Impact itself was a highly publicized event, but daily encounters with pit bulls are becoming more frequent. Recently, there have been four incidents involving our guns and gangs unit. All four cases involved officers executing search warrants, but the officers had to first deal with pit bulls. This delay may have led to the destruction or disposal of evidence and could in fact facilitate the escape of suspects.

These are not cases where pit bulls have been in the home as the family dog; rather, as I've already mentioned, these are cases where pit bulls have been trained to guard the home and attack intruders, including the police. In reality, they have been trained to attack and are being actively used as weapons. In these cases, our tactical officers on the emergency task force have had to retrain in order to deal with these dogs, and they do so on a regular basis.

These are just a few of the cases that have involved our specialized units and our emergency task force. Unfortunately, the examples are far more widespread than I've already cited. For instance, a significant number of the gun calls that we attend to and barricaded-person calls that our emergency task force responds to involve pit bulls. Our emergency task force officers say that, on average, one in four of the warrants they execute is at a place where there is a pit bull.

The use of these dogs for the purpose of intimidation and protection is so significant that our emergency task force people now train in methods of handling pit bulls as part of their regular training routine. They are trained to use a dog snare, a long pole with a loop at the end, similar to what is used by animal control services. The dog snare can be an effective way of controlling the animal and moving it to another part of the home or location while the officers continue about their duties.

Tasers are also an effective method of controlling the dogs, and the tactical officers are trained on their use as well. Lastly, lethal force can be and is used when appropriate.

Fortunately, our guns and gangs unit and our drug squad officers travel with an emergency task force contingent as a matter of routine when they are going to conduct high-risk takedowns, but our local patrol officers and major crime officers do not always have the resources of trained emergency task force personnel readily available.

All our police officers are finding themselves faced with the reality of attacks by pit bulls. While the emergency task force has the training and a variety of use-of-force options to handle pit bulls, this is not the case for the officer on the street who is attending a routine break-and-enter call, an unknown trouble call or a domestic call related to situations in a home or in a business and then also faces the danger of a pit bull attack. Our officers are becoming equally as cognizant of dangerous dogs as they are of guns when they arrive on the scenes of their calls.

I would like to take the opportunity to recognize that our officers have been thoroughly trained to deal with dangerous situations. They carry weapons; they are trained to know how to use those weapons. Yet pit bulls provide enough of a threat to the safety of our officers that it is now a prime consideration during the course of their duties.

There is also a significant threat to public safety that can be addressed in this legislation, should it pass. In those unfortunate situations where a dog attacks a member of the community, it is often a 911 call that is the contact to the police, who are first to arrive on the scene. When faced with an ongoing attack, often the only available option for the officers is to destroy the dog. Pepper spray has been found not to be effective with these dogs. And as I've already indicated, our emergency task force are the only ones who have other, less lethal options. Even if those options were available to all of our officers, the potential threat to public safety would still exist.

Last summer there was a much-publicized case involving a man who was attacked and severely injured by two pit bulls he was walking for a friend. Our officers had to shoot those dogs several times while the attacks continued. These dogs do not stop until they are dead. That is a significant public safety issue.

I would like to say to members of this committee that my position here, I believe, is clear and simple: Pit bulls pose a very serious, very real and legitimate threat to the safety of the public and to our police officers. I'm sure you will hear much more of this from other colleagues who will follow me in the appearance here. Public and officer safety should be a significant concern to everyone, and I believe that it is.

I know that the argument can be made that this ban should only apply to dangerous dogs. However, I know how difficult and challenging it can be to make these changes in a timely way.

I am a firm believer in trying to walk before we can run. Whatever can be done now to improve the safety of the public and our officers should be supported. Our

officers have plenty of challenges dealing with criminals; they shouldn't have to deal with pit bulls as well.

I would encourage the committee to move swiftly in sending this legislation to the House for consideration.

I will obviously be pleased to answer any questions the members might have.

The Chair: We have time for one brief question from each caucus, beginning with the PC caucus.

Mr. Norm Miller (Parry Sound-Muskoka): Thank you for coming before the committee today.

You said that pit bulls are used as weapons. How do you describe a pit bull? There has been a lot of talk in the legislation about what a pit bull is, and I suspect that the pit bulls that are being used by criminals as weapons are not some of the purebred dogs listed in this legislation; for example, the Staffordshire bull terrier, which—I don't know whether you're familiar with the specific dog—is 14 inches tall. It's 30 pounds. I don't think that's the dog that's being used as a weapon.

Mr. Fantino: I can only go by the information provided to me, and the reference is that the dogs that we are encountering in the circumstances I have described are pit bulls. Whatever pedigree one wants to develop or DNA that follows—all I can tell you is that the information is that these are in fact pit bulls.

Mr. Norm Miller: Are you aware that a purebred Staffordshire bull terrier has not had an unprovoked bite in Canada?

Mr. Fantino: I can't argue with your comments, but, again, I reiterate that I have seen them myself at events like Caribana, where they're brought there on chains, virtually, by their owners—totally intimidating and very frightening.

Mr. Norm Miller: What do you think the criminals would do? Once these dogs are banned, they're going to switch to another breed.

Mr. Fantino: That's no answer.

Mr. Kormos: One of the concerns that was expressed and became so obvious is that, first of all, in many municipalities, there aren't even prosecutions under the provincial statute, the Dog Owners' Liability Act. To its credit, Toronto appears to have been one of the few communities to prosecute criminal charges against a dog owner whose dog very viciously attacked a victim. Of course, one of the things that does is give a victim access to the criminal injuries compensation fund, which they wouldn't have without a criminal prosecution.

There has been a proposal—and this is the question—that just as the provincial statute deems liability on the part of the dog owner, we need a federal criminal statute which presumes criminal culpability on the owner of the dog, and the suggestion that that will tune up a whole lot of dog owners, especially the scofflaw types you're talking about.

Mr. Fantino: I'm in agreement with you that the laws of the land should not only be appropriate to ensure that we optimize public safety and the administration of justice but should also be enforceable. I'm a strong advocate of using all the laws on the books to deal with these

issues, but, from my point of view, this added piece of legislation clearly creates an added measure of safety for the public and our police officers. I feel very strongly that it will be a big help.

The Chair: The government side, Mr. Duguid.

Mr. Brad Duguid (Scarborough Centre): Welcome, Chief. It's great to see you again. You made some very poignant remarks. You talked about these dogs as being a serious threat to public safety: that these dogs don't stop until they're dead; that it often takes a number of shots to take them down; that pepper spray doesn't even work with these dogs. I think it's obvious to many of us that these animals are uniquely bred to do serious damage, if not kill.

My question to you is, in your experience as a police officer and in the experiences shared by your fellow officers, do you consider this breed to be unique compared to others in terms of its ability to do serious damage?

Mr. Fantino: I'm no expert on breeds of dogs—and let that be on the record—although I have some knowledge of some breeds of dogs. The point here is that this is a type of dog we're running into now in the hands of criminals, and they appear to be trained and there for the sole purpose, as I stated earlier, of either protecting or intimidating people from activities associated with illegal enterprise or actually used as attack weapons on the police. We've seen that time and again, as I've described. We find them in marijuana grow houses and in other places as a matter of routine.

The thing I should also add is that it isn't only about the attacks; it is how they are used to intimidate. Walking along Caribana, as I have for a number of years, I have seen those dogs on chains being paraded around the public domain, and I often think what would happen if those dogs get loose with all of those people around and all of that. You look at the individual with that dog, and I don't want to categorize pit bull owners as representing that element, but clearly there's an element out there who use these dogs as an extension of their intimidation tactics on people.

The Chair: Thank you, Chief Fantino, for coming in today.

1100

ANIMAL ALLIANCE OF CANADA

The Chair: Is there a representative in the room from the Animal Alliance of Canada?

Please come forward. Welcome this morning. Please make yourself comfortable.

Ms. Liz White: Sorry, I was just struggling to get to the microphone. Thank you very much for providing the opportunity to come and comment today. My name is Liz White. I'm a director with the Animal Alliance of Canada and Environment Voters.

The Chair: Liz, you have 15 minutes before us today. If you choose to leave some time remaining, it will be divided among the parties for questions. You've already identified yourself, so please proceed.

Ms. White: You should have before you a document that was paper-clipped and it should have three parts. The first part is the submission that we will make today. The second part is a much broader information package about the brief, including a much better piece of legislation, in our argument, done by the New York state Legislature, which is attached on appendix 3, I believe. The third is a series of spreadsheets that comes from the Calgary Animal Services, in an attempt to demonstrate that alternatives work. I will be referring to some of those documents.

We're asking the standing committee to vote against Bill 132 and we're recommending that the Attorney General work with provincial experts such as the College of Veterinarians of Ontario, the Ontario Veterinarian Medical Association, the OSPCA, associations representing shelter administrators, who will actually be implementing this legislation, animal behaviourists, purebred groups and people from other jurisdictions with alternative types of legislation, in order to bring in effective, enforceable, cost-efficient and humane dangerous dog legislation, such as the one that was passed in New York state.

We would like the committee to:

- consider tabling legislation that will actually address dangerous dog legislation as opposed to Bill 132, which is punitive to a poorly defined class of dogs, regardless of temperament, and even when there is no history of biting;

- allow for animals who bite because of physical abuse, neglect, starvation, poisoning, injury, training or drugs, which are all the methods of training for animals that Chief Fantino was talking about;

- bring in additional legislation that will address the root cause of the issue, including inappropriate breeding and selling of these animals through backyard and puppy mill breeders—which, by the way, the Liberal Party tabled when they were in opposition and, I would argue, ought to bring back—and deal with the aggressive and cruel training practices designed to produce guard and fighting dogs;

- implement a province-wide ban on the practice of tethering dogs 24 hours a day, seven days a week, a known trigger for biting and aggression, as set out by the Centers for Disease Control in the United States; and

- I would argue that you should prohibit the sale of dangerous dogs, if in fact you think they are under the Animals for Research Act.

We recommend these changes for the following reasons.

We believe that you are downloading costs on the municipality. In fact, the city of Toronto recognizes this. At council—and I believe this has been forwarded to the government—they're asking the Attorney General to "fund 100% of the municipal implementation costs related to the proposed amendments to the Dog Owners' Liability Act for a three-year transition period."

The download costs, for people who aren't familiar with shelters, will be the following: the cost to implement the legislation, which is already recognized by the city of

Toronto as being fairly significant, I think; the ongoing costs of housing and killing substantial numbers of surrendered dogs and other dogs that will have to be killed to make room for those surrendered dogs; and the cost of housing seized animals for extended periods of time, where the seizures will be challenged in court.

The second reason is that animal control services across the province are already severely underfunded. I will leave that; the statistics are there.

We argue that the province is again downloading legal liability. If anybody who works knows anything about animal control, most of them are not operative from 6 p.m. to 8 a.m., and Mr. Fantino's staff get called to do those kinds of calls about dogs at large. I would argue that if the municipality did not respond in a reasonable period of time and a person was bitten, they would actually be legally liable for not taking action, at a time when most municipalities treat animal control as a fairly marginal activity.

The Attorney General does not have the support of most of the experts in the province. As the city of Toronto document points out, "Breed bans are strongly opposed as an appropriate response by all veterinary bodies, all animal welfare groups, most animal behaviourists and many of the officials who are" actually going to be enforcing this legislation. I think it would behoove this committee to actually be very considered about what they are doing here.

The last point I'm going to make is that the amendment to the legislation to allow the sale of these dogs to research is just wrong. If they are, in fact, what the minister calls "ticking time bombs," then they ought not to be in a research facility at all. I would argue that the legislation makes it most difficult for animal control officers to actually implement this part of the legislation, for the following reasons.

They have to understand what the prohibited breeds are and whether they actually apply.

Secondly, they have to determine whether the animals that have come in are impounded, surrendered, seized, restricted or not restricted in order to determine which dogs are legally allowed to be sold to research and which are not. This will be an interesting exercise in communities where animal control is a marginal activity and where the dog pound is a barn, a four-cage capacity building in a field or a works yard, or in larger regional centres like the region of York, where the animal shelter consists of two trailers.

Animal control, most of which don't have any money, needs to demonstrate sufficient capacity and record-keeping to ensure that, where there is a legal challenge of a seized dog and where the identification is in dispute, the animal will not be sold to research, which I can tell you from experience is a difficult process. We've already been through a challenge with the Ministry of Agriculture and Food on that very subject.

I think this is the most important part for the committee to consider and begin to deal with: I think there's a conflict between the Animals for Research Act and the

Dog Owners' Liability Act. The Animals for Research Act allows the adoption of dogs and does not distinguish on breed; the Dog Owners' Liability Act prohibits breeds. I'm not a legal expert, but I think it could be argued by groups that are adopting these animals out that, in fact, the Animals for Research Act provides them with the legal cover to adopt these animals out.

I would like to just take one more minute to ask you to take a clear look at the New York state legislation. This is a piece of legislation that recognizes that dog bites occur for a variety of different reasons. Under the current legislation, as you have it, an animal can be charged with being vicious if the animal's owner beats the dog and the dog bites. There is no recognition that there are different types of bites for different types of reasons. This piece of legislation doesn't allow for any of those particular considerations. The New York state legislation is a state-wide piece of legislation that is well thought out and well tooled to actually deal with dangerous dogs, including pit bulls. I would argue that this piece of legislation deals with every single circumstance that Chief Fantino talked about in his particular dissertation.

We are talking about a very small group of dogs. In fact, the American Society for the Prevention of Cruelty to Animals did a study in Prince George's county in Maryland. They seize 900 pit bulls a year, it costs a quarter of a million dollars, and they, by their own admission, say that 80% of those animals are not dangerous and are adoptable.

1110

The Chair: Liz, thank you very much. We have time for roughly one question from each caucus, beginning with Mr. Kormos.

Mr. Kormos: Thank you kindly. You talked about liability—if legislative research would please listen—because under the existing law, the Dog Owners' Liability Act, we know that there's been marginal, if any, enforcement of it even when people have been victimized horribly by vicious dogs of any number of breeds.

We heard the Attorney General today talk about resources—money—going out there to SPCAs and a ban on pit bulls. So you've caused me to have concern now about the liability of the province. In other words, the province having said it's banning pit bulls and that it's expending the resources, presumably adequate resources, when a person is victimized down the road by a colloquial pit bull that is vicious, is the government similarly there in an enhanced position of liability?

This is what I put to research that we'd like some answer on. The government has made an undertaking here, made a commitment. It's not banning bad and vicious dogs; it's banning pit bulls. So when a person is victimized by a vicious pit bull—the type that bikers own, which is probably not a purebred, which is probably not registered and which probably had the crap beaten out of it to make it violent—are we then making the province, with its deep pockets, the defendant in the next lawsuit?

The Chair: Mr. Kormos, thank you.

Mr. David Zimmer (Willowdale): You expressed your idea or your thoughts that this legislation was going to present problems for municipalities in Ontario. Let me quote something to you.

Roger Anderson, president, the Association of Municipalities of Ontario: "AMO appreciated an opportunity to advise the minister on how to implement the province's pit bull ban in a manner that is practical, effective and affordable for Ontario municipalities"—and I emphasize "affordable for Ontario municipalities"—"and we know that the minister will continue to work with us as the legislation proceeds."

A second quote from Mayor Miller, the city of Toronto: "I support the province's swift action.... This problem is not exclusive to any single municipality; it is a province-wide issue and therefore the best solution is a province-wide strategy to keep Ontarians safe from dangerous dogs."

Ms. White: I agree that we need a province-wide strategy. I have no problem with that. In fact, David Miller's own council has asked this parliamentary body to actually pay for 100% of the implementation of the three-year plan.

Secondly, if I were a municipality, I would fire AMO. We did a survey of the municipalities in Ontario. Half of them responded. This government did not talk to them. Most of them have dangerous dog legislation which they feel works well. This government decided not to be bothered to talk to these people, who are the people who are going to be on the ground implementing this legislation. It will not be this government.

Mr. Norm Miller: Thank you for your presentation. First of all, did the government consult with you before they introduced this legislation?

Ms. White: The government refused to consult with us. We offered to bring people up from New York state to look at this better piece of legislation. No calls were returned. In fact, when we asked, we were refused.

Mr. Norm Miller: That leads into the next part of what I was interested in, and that was specifically New York state, because it's more related to the province. We've heard that Calgary has been very successful as a city in reducing dangerous dog bites with their comprehensive bylaw, but New York state might apply more to the province. Can you talk a bit more about that, please?

Ms. White: The reason we brought up New York state is because applying it to a city and applying it to a province or a state are quite different undertakings. The New York state legislation was drafted in conjunction with the ASPCA. So there were humane groups and a number of other experts who sat down and looked at this legislation to try and determine. The reason I think New York state legislation is really good is because they have a bigger pit bull problem—if you want to call them pit bulls, and a problem—perceived by government, than anything we can ever experience in Ontario. I would argue that if they feel they can address this situation through dangerous-dog legislation, and recognizing that

there are reasons for bites that are different, that are not dangerous, that's really important.

Just one last thing: Where there are situations that animals have been declared dangerous, there is a set hearing so that there can be evidence placed and so there can be some determination as to whether the person who did—

The Chair: Ms. White, you've exhausted your time. Thank you very much.

Is Arlene Malcolm in the room? No.

POLICE ASSOCIATION OF ONTARIO

The Chair: Is a representative of the Police Association of Ontario in the room? Please come forward.

Good morning. Please be seated and make yourself comfortable. Thank you for bringing along your brief in multiple copies. You have 15 minutes before us this morning. If you use less than the full amount of time, it will be divided among the parties for questions. Please begin by stating your name for the purposes of Hansard and proceed as you wish.

Mr. Bruce Miller: My name is Bruce Miller. I'm the chief administrative officer of the Police Association of Ontario. I was also a front-line police officer for over 20 years before taking on my current responsibilities. With me is Brian Adkin, who is the president of the Ontario Provincial Police Association. Brian has been, and still is, a front-line police officer with the Ontario Provincial Police and has served there for 32 years.

The Police Association of Ontario, PAO, is a professional organization representing over 21,000 police and civilian members from 63 police associations across the province. The PAO is committed to promoting the interests of front-line police personnel, upholding the honour of the police profession and elevating the standards of Ontario's police services. We've included further information on our organization in our brief.

We appreciate the opportunity to address the standing committee on Bill 132 today and would like to thank all the members for their continued efforts for safe communities. As you know, Bill 132 would impose more effective and increased controls on dangerous dogs, hold irresponsible owners more accountable and ban pit bulls in the province. We have reviewed the proposed legislation and would like to make several comments. Our comments will focus solely on any possible impact to community safety from the perspective of front-line police personnel.

We canvassed our membership on this issue and received numerous examples of both police personnel and members of the public across the province being threatened or attacked by dangerous dogs. Here are some examples.

An officer approached a youth as he got out of a car. When the officer identified himself as a police officer, the youth ran into his house. The officer gave chase and was attacked by a dog. The dog bit the officer's right forearm and held it. The officer lost an actual chunk of

skin two inches long, a half-inch wide and a half-inch deep from his forearm, and was off duty for several weeks.

In another incident, a boy was badly bitten by a dog. Police were called and the dog's owner asked all personnel in uniform to stand back while he loaded the dog into the animal control truck. He stated that his dog was trained to attack anyone in uniform, especially the police. The owner was a suspected drug dealer.

In another case, two officers were sent to check on a homeless woman who had passed out inside a business. She and her boyfriend had been drinking. She had her dog on a leash. The animal broke loose and the officers were forced to shoot at it as it lunged at them. The dog was treated, survived and then returned to the owner. Some time after this, police were called to a local hostel where the owner was threatening staff with the dog.

All the above three cases involved pit-bull-type dogs. I can also advise you that the overwhelming number of examples we have received from our membership involve pit bulls.

1120

We have witnessed a disturbing trend over the past 10 years where dangerous dogs are being acquired by the criminal element to be used as weapons of intimidation and fear. Our members confront these animals on a daily basis. I know that I certainly did. Officers are routinely warned to "watch out for the dog" when they are dispatched to calls.

Dogs are used by criminals to either prevent or slow an officer's entry on to a property. These dog owners are irresponsible and dangerous individuals who care little about the welfare of others and whose judgment is often clouded by alcohol and drugs.

We believe that the new legislation will hold irresponsible dog owners more accountable. We support the tougher and increased penalties and we support the fact that action could now be taken before a person or other animal is actually bitten.

We readily admit that we are not experts on dog breeds, behaviour or training. We do know that our front-line members have told us that incidents involving dangerous dogs are becoming more and more prevalent. Criminals are using dangerous dogs to intimidate and threaten. The reality is that pit-bull-type dogs are their weapons of choice because of their ferocious reputation.

We contacted the Waterloo police association, whose members police the twin cities of Kitchener and Waterloo. We were advised that they had a number of serious incidents involving pit bulls, but that problem has ended with the local ban. We also contacted the Winnipeg Police Association. Winnipeg placed a ban in effect in 1990. Their police association advises that this ban was very effective.

We readily admit that there are many responsible owners of pit-bull-type dogs. We are cognizant of the fact that no single piece of legislation will completely end this problem. However, we do feel that Bill 132 is a

necessary and positive step forward to help ensure community safety and would urge its swift passage.

In closing, we would like to thank the members of the committee for the opportunity to appear here today. We greatly appreciate your interest in community safety and would be pleased to answer any questions that you may have.

The Chair: Thank you very much for coming. We have time for a question or two from each caucus, about a minute and a half each side.

Mr. Zimmer: Look, we've heard that, as dangerous as pit bulls are, there are also other dangerous dogs; I suppose Rottweilers and German shepherds, bull mastiffs and so on. Is it the sense of your association, notwithstanding that, that pit bulls are really in a class above and beyond the ferociousness of, say, a German shepherd or a Rottweiler; that they are a whole different world of attack?

Mr. Bruce Miller: Certainly, I want to reiterate that there are many responsible owners of pit-bull-type animals, but, remember, we're dealing with the criminal element. It seems that pit bulls or pit-bull-type dogs have become a status symbol for the criminal element that we didn't see with other breeds of dogs. Our members are running into them on a daily basis responding to calls, doing drug warrants. One only has to walk out—I know the Chief earlier referred to Caribana—down Yonge Street or some of the other areas and see these types of dogs right on the sidewalk. Aside from their ferociousness, there's a big intimidation factor for members of the public.

Mr. Zimmer: Do you expect, if the legislation is passed and the pit bull ban is in, that the experience, say, in the cities that your association represents is probably going to be the same as Kitchener and Winnipeg?

Mr. Bruce Miller: We certainly hope the legislation has the same results as we've seen in Winnipeg and Kitchener-Waterloo.

Mrs. Julia Munro (York North): Thank you for bringing your particular experience to the attention of the committee. Throughout your presentation, I'm struck by the fact that, obviously, logically, you're talking about the criminal element here. So it seems to me that what we're really talking about is dog ownership, that it is a particular group of people who own a particular dog who create the kinds of really horrific issues you're dealing with. You refer to the fact that the pit bull type is the weapon of choice and that the serious issues you've encountered again go back to who actually controls these animals, and we're talking about the criminal element.

All of us around this table recognize the importance of community safety, but I wanted to ask you if you believe that a ban on animals described as pit bulls is going to reduce the number of pit bulls owned by the criminal element.

Mr. Bruce Miller: We believe it's going to be effective, and it has proved to be effective when we checked with other jurisdictions. You're right; there are two issues here. One is making sure that dog owners are responsible

and held accountable for their actions. We believe the bill addresses this. The other issue is the growing problem we've seen, this phenomenon with pit-bull-type dogs. That's why we support both segments of the legislation.

Mrs. Munro: My concern is that if they are breaking the law as criminals, what part of responsible dog ownership elements are they going to be concerned about? I have difficulty imagining that they're suddenly going to change their views with regard to this particular breed.

Do you have any contact with other police associations about—certainly we are told that other breeds can fulfill the purpose chosen by the criminal element. Do you have any information about that?

Mr. Bruce Miller: I can only talk about our membership's experience; we represent 63 police associations across the province. Obviously, the Ontario Provincial Police Association represents police officers, police personnel, working across the province, and I'll let Brian answer from that perspective. But we've seen this issue with pit bulls where we didn't see it with other breeds before, and I think it's because of the ferocious—

The Chair: I need you to sum that one up briefly, please.

Mr. Bruce Miller: That's why we're here to support the legislation today, because we have this problem with pit bulls that we haven't experienced with other types of breeds across Ontario or, to our knowledge, in the rest of the country.

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: Gentlemen, you haven't been unfair in terms of presenting the scenarios that police officers are confronted with, and it's consistent with what we've heard from any number of sources. We made this observation early on about the pit bull being the dog of choice for the outlaw: the illegal biker, the drug trafficker, the street hood. I suggested facetiously the other day that maybe the law should require all pit bulls to have pink bows and maybe that would be a deterrent.

But following up from Ms. Munro, just as with gun registration—I mean, law-abiding citizens are the ones who have lined up to register their firearms. You didn't see Hell's Angels patches out there at the front desk of police stations when people were registering firearms. My concern is that once again here, it's going to be the very pit bulls that probably don't pose a threat because they're owned by responsible owners who want to buy purebred pit bulls and own them as pets that are going to be surrendered up to comply with the law, but the outlaw bikers, the drug dealers, the street hoods and the gang members don't give a rat's butt what the police think about them anyway—nor are they, in many cases, even afraid of the police. It's remarkable. How do you address that? Is there any sense in that at all?

Mr. Bruce Miller: I'll let Brian answer too, but I'd just quickly say right at the start that we've checked with those other jurisdictions, and they have said it has worked there.

Mr. Kormos: I know what they've said.

Mr. Bruce Miller: It has worked and it has been enforced and it has been very positive for removing pit bulls from those owners as well.

Mr. Brian Adkin: In Winnipeg, Mr. Kormos, it has worked very well for them, when we talked to the Winnipeg people.

The other thing about it is that it's important for us to have somewhere to start, and this is a very good start to get it moving. One of the big issues is that the injury, that type of thing, that our people face right off the bat is usually very serious; you don't get a second chance. This is a problem especially for my members, policing across Ontario, going into areas they may not have encountered before where you don't have a lot of intelligence, don't have the ability to be there one time before.

Your idea about the criminal aspect, Mr. Kormos, is excellent, and we'll be taking that to our national organization to bring that forward.

The Chair: Thank you very much for coming in this morning.

1130

NICK MAYS

The Chair: Our next deputant is presenting to us by teleconference from the UK, a Mr. Nick Mays.

Mr. Mays, can you hear us?

Mr. Nick Mays: I can hear you fine. Can you hear me?

The Chair: We can hear you loud and clear. My name is Bob Delaney. I'm the Chair of the standing committee on the Legislative Assembly. You're speaking to us this afternoon—UK time—at the Ontario Legislative Building to the assembled committee.

Mr. Mays, you have 10 minutes to present to us. If you leave any time remaining, I'll divide it among the elected members present to ask you questions by party. Please begin by stating your name for Hansard and proceed.

Mr. Mays: Thank you. Good afternoon. My name is Nick Mays. I am chief reporter of Our Dogs newspaper, the UK's leading weekly specialist canine periodical. I am a dog owner, and I consider myself to be a responsible dog owner. I have reported on the subject of breed-specific legislation, BSL, since 1991, when the British government enacted the Dangerous Dogs Act, and I have seen quite clearly that it does not work. John Major's Conservative government established the concept of breed-specific legislation in the UK in the spring of 1991 following a spate of particularly nasty dog attacks upon people by dogs alleged to be American pit bull terriers.

Even with a recent change of leader, the government was still deeply unpopular. The recession was beginning to bite and the government was on the ropes. The media had found a new bogeyman to hit on in the form of dangerous dogs. Ever since 11-year-old Kelly Lynch had been mauled to death by two Rottweilers in 1989, there had been lurid accounts of dog attacks in the national newspapers. Things reached a fever pitch in the summer of 1990, but miraculously, when Saddam Hussein

invaded Kuwait, the dog attacks either ceased to happen or weren't good copy any more. When, however, the Gulf War ended in early 1991, dogs were back on the agenda.

It is often supposed that Major's predecessor, Margaret Thatcher, did nothing to assuage public disquiet about dangerous dogs, but it is often forgotten that she brought through a short bill called, by strange coincidence, the Dangerous Dogs Act, 1989, an act designed simply to increase and tighten up the powers available to courts in dealing with aggravated offences involving dogs as enshrined in the existing 1871 Dogs Act.

So when the media hyped up dog attacks again in the spring of 1991, Home Secretary Kenneth Baker assured his place in history by accepting the advice of lobby groups and enacting the Dangerous Dogs Act, 1991, which was based on the simple premise of BSL, that all dogs of a particular breed or type are inherently dangerous and, by association, their owners belong to a particular social class. In his autobiography, *The Turbulent Years*, Kenneth Baker goes into some detail about his thoughts at the time: "The issue was made more complicated by the fact that the largest number of reported dog bitings was caused by Alsations"—that is, German shepherds—"and other domestic breeds whose owners would never have regarded their pets as dangerous," writes Baker.

Baker's initial instinct had been to order the compulsory destruction of all pit bull dogs in the UK, but was advised in strong terms by the RSPCA and the veterinary profession that they would not co-operate in the wholesale destruction of dogs in this way. So Baker had to consider carefully what to do. Again, his mindset is clearly revealed in his autobiography:

"I soon discovered that while many people loved dogs, others loathed them. There was a danger of overreaction, with demands to have all dogs muzzled and to put Rottweilers, Dobermans and Alsations in the same category as pit bulls. This would have infuriated the 'green welly' brigade. However, the 'pit bull lobby' came to my aid by appearing in front of TV cameras with owners usually sporting tattoos and earrings while extolling the gentle nature of the dogs, whose names were invariably Tyson, Gripper, Killer or Sykes."

Since 1991, the DDA has been shown to be flawed, and thus the whole concept of BSL is flawed. Dogs have been seized simply because of their resemblance to the pit-bull-type dogs, under section 1 of the act. Meanwhile, section 3 applies to the loose definition of any breed of dog being "dangerously out of control in a public place" by being mere apprehension on an individual's part that a dog is dangerous. This is literally a dog hater's charter, and has been used in many cases in neighbour-to-neighbour disputes.

Perhaps the worst facet of the DDA was that it was stacked against the dog and the owner from the start. The burden of proof was reversed: You were presumed guilty until proven innocent. It was down to you, the owner, to prove that the dog was not of the type or that your dog

had been dangerously out of control or, in some cases, both. Small wonder, then, that the DDA was called “a knee-jerk reaction of the very worst kind.”

It has been noted already in the proceedings in Toronto that the definition of “pit bull” is impossible when it is defined as a “type” of dog. The UK’s experience has shown this to be the case. Staffordshire bull terriers, crossbreeds, mongrels and other breeds such as Labradors and boxers have been seized as pit bulls.

Let us remind ourselves of some of the highlights of the Dangerous Dogs Act.

Tyler: Debby Stacey’s Tyler, a Staffordshire bull terrier cross, was seized in December 1991, one of the first victims of the DDA. Police kicked Debbie’s front door down and dragged Tyler off Debby’s screaming daughter’s bed in an early morning raid. One officer dragged Debby by the hair, dressed only in her nightdress, down the street in front of a bus stop full of commuters. Her feet were lacerated. Tyler was placed in a secret kennel where there is evidence that someone was letting the dogs fight each other. Tyler was covered in bite wounds, and even had lesions inside his mouth. When the case came to court, the judge said the case was so horrific that there should be a separate cruelty investigation. There never was.

After the case against Tyler had been proven, he was mandatorily destroyed. His body was returned to Debby by the police. His body was thrown on Debby’s doorstep by the police, in a garbage bag at the end, an act of sick spite. What effect did this have on Debby’s children, on their perception of the police? The DDA did nothing to enhance good relations between the police and society. That it was used in some cases as a weapon against individuals was clear beyond any doubt, but then bad laws often are.

Bullseye, another Staffie cross, was shot to death by police in March 1997, just weeks before the DDA was amended. He was a family pet, owned by Mr. and Mrs. Brown and their four young children.

The Chair: Mr. Mays, just for your edification, you’ve got about three minutes remaining.

Mr. Mays: Oh, I shall have to be brief. You have a copy of my presentation, I believe.

The Chair: We do.

Mr. Mays: Perhaps with the committee’s approval, I will skip toward the last page, if that is acceptable to the committee.

The Chair: Go ahead.

Mr. Mays: How much did this wonderful act cost and what did it achieve? Nearly £8.7 million was spent in breed identification alone in respect of DDA cases in 1996. One politician remarked at the time that a virtual cottage industry had grown up in pursuing DDA cases, mainly from the prosecution side. Also in 1996, a medical study found that there was no decline in dog bite presentations at hospital emergency departments since 1991. More recently, a report by the BBC in 2002 said that dog attacks have increased by 25%, again since 1991. So did it work? You do the math.

BSL has now been exported to other countries around the world, even though the concept, not to mention the DDA itself, has been shown to be flawed. However, BSL seems to represent to politicians in every country now, as much as it did in 1991, a quick-fix solution to anger over attacks by dangerous dogs. However, BSL is not a solution; it is, at best, a deferral of a localized problem and in the long run causes far more problems than it solves.

The pattern is the same: A spate of dog attacks, initially reported by local media, then hyped by national media, leading to politicians deciding to be seen to do something and then, on bad advice, seizing upon BSL as the way to tackle the problem. “Ban a particular breed of dog,” they say, “and, hey, no more dog attacks.” The only trouble is, BSL doesn’t work.

Let us remember that the German government changed its Constitution to remove certain legal safeguards from dog owners. Therefore, if a police officer has a mere suspicion that a dog is dangerous, that police officer can enter the owner’s home without a warrant and seize the dog and arrest the owner. In entering the home of a suspected or known rapist or murderer, the German police require a warrant, but if you are a dog owner, your civil rights have been taken away from you—no rights, no warrant, no dog.

Just think about that for a moment: They changed their Constitution. They removed dog owners’ civil rights. In the UK, the burden of proof was reversed, as is being proposed in Ontario, a province of Canada, a great country, a supposedly free country. It is a slippery slope to enact BSL.

The Ontario Assembly could follow that wise, intelligent lead of Austria and listen to the advice of experts who truly know about dogs or they can simply follow the pro-BSL herd, ignore the lessons of recent history and of wider human history and simply enact another bad and divisive law that penalizes the innocent. Historical precedent shows that people remember bad laws at the ballot box.

I thank you.

The Chair: Thank you very much, Mr. Mays. You’ve used the time that we have allocated for you, so unfortunately there isn’t the opportunity to ask you any questions. But thank you very much for joining us by teleconference from London this morning and also for your deputation.

Mr. Mays: Thank you very much. Goodbye.

1140

CANADIAN VETERINARY MEDICAL ASSOCIATION

The Chair: We will wait for the clerk’s office to contact the next deputant, the Canadian Veterinary Medical Association, who are standing by to join us by teleconference from Winnipeg.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Mr. Chair, maybe while we’re wait-

ing, it would be appropriate to make a comment. We had a veterinarian yesterday make some good comments and some ill-advised comments. I want to share a broader concern other than the inappropriateness of some of the comments that were made. My experience over the last—

The Chair: Only if it's a point of order.

Mr. McMeekin: OK. I'll stop, Mr. Chair. If you want to stop the argument, I'll stop.

The Chair: We have Dr. Keith Campbell on the line.

Dr. Keith Campbell: Hello. There's quite a bit of feedback, but I'll do my best.

The Chair: I can hear you loud and clear. Can you hear me?

Dr. Campbell: I can't hear you. I've got a bit of background noise.

The Chair: Are you using a speakerphone?

Dr. Campbell: Now I'm not.

The Chair: Can you hear me now?

Dr. Campbell: I can. There's still quite a bit of background noise. OK?

The Chair: Everybody here is being very quiet for you, so it's either in the telecommunications lines or somewhere at your end.

My name is Bob Delaney. I'm the Chair of the standing committee on the Legislative Assembly. You will be speaking to us, representatives of all three parties from the government of Ontario, here at the Legislative Assembly building this morning. You'll have 15 minutes for your deputation. If you use less than that, we can divide the time remaining among the three parties for questions. Please begin by identifying yourself for the purposes of Hansard. Thank you for joining us this morning and proceed.

Dr. Campbell: My name is Dr. Keith Campbell. I'm a veterinarian in Winnipeg, Manitoba, and I am the president of the Canadian Veterinary Medical Association.

First, on behalf of the Canadian Veterinary Medical Association, the CVMA, I'd like to thank the members of the standing committee on Bill 132 for allowing me to make this presentation.

The Canadian Veterinary Medical Association is the national organization representing over 9,200 veterinarians across Canada. Our membership consists of veterinarians in private practice, government service, academia and industry. The diversity of our membership base gives us access to sources of expertise on many topics, including animal behaviour and animal welfare.

The CVMA has long been concerned about the safety of people when interacting with animals. In July 2002, the council of the CVMA approved the following general position statement entitled *Legislation Concerning Vicious Dogs*. The position reads:

"The Canadian Veterinary Medical Association supports dangerous dog legislation provided that it does not refer to specific breeds. This legislation should be directed at fostering the safety and protection of the general public from dogs classified as dangerous. The CVMA encourages and supports responsible pet ownership."

The background to the position statement is very brief and states that aggressive dogs, regardless of breed, are a significant threat to humans and other animals. The CVMA recognizes that aggressiveness in dogs is often a product of inappropriate methods of genetic selection, rearing and training. The CVMA recommends that municipalities considering dangerous dog legislation consult the model municipal bylaws proposed by the National Companion Animal Coalition. We have attached the model bylaw that was produced, and I'll talk about that in a second.

Canadian veterinarians were appalled at the numerous dog bite incidents last summer. We feel that whenever people and animals interact, human safety is of paramount importance. The CVMA has participated in the development of dog bite prevention programs with groups including the National Companion Animal Coalition and the Canada Safety Council, and CVMA encourages members to actively participate in educating schoolchildren regarding safety around animals. The CVMA encourages all levels of government to enact legislation that will protect the public from potential harm caused by animals.

We know that this committee has heard many presentations about the proposed legislation. We know that other groups have discussed the difficulty of enforcing bans on specific breeds of dogs due to the inability to prove the genetic lineage of individual dogs. We know that others have pointed out that vicious tendencies can occur in any breed of dog. We know that behaviourists have informed you that aggression may be as much, if not more, environmental than genetic. We know that other groups have warned that enactment of the legislation as proposed will result in the abandonment and euthanasia of large numbers of dogs, many of which are innocent, gentle animals. The CVMA agrees with all of these points.

As a result of CVMA's long-standing belief that responsible pet ownership is necessary in today's Canada, we collaborated with other interested groups and in 1999 produced the document entitled *Sample Municipal Bylaw Regulating the Keeping and Controlling of Companion Animals*. Again, we've attached that document. We believe this document could be an effective framework for legislation to ensure public safety with regard to companion animals.

The model bylaw provides a definition of a dangerous dog and outlines the responsibilities of all dog owners and the added conditions for ownership of dogs designated as dangerous. The conditions for ownership of dangerous dogs include higher licence fees, mandatory sterilization, strict leashing and muzzling regulations, confinement regulations, insurance requirements and warning signs on the owner's property.

The CVMA believes that legislation of this nature, coupled with adequate resources for enforcement, will better meet the needs of society for protection from injury by dogs.

In conclusion, the Canadian Veterinary Medical Association supports the enactment of legislation to pro-

tect members of the public from dangerous companion animals but cannot support breed-specific legislation. The CVMA encourages responsible pet ownership and supports any and all regulations to encourage and support that ideal.

Thank you for your attention and consideration. That's the end of my presentation.

The Chair: Thank you. If you can stay on the line, we've got time for a few questions. Each caucus should have about two and a half minutes, beginning with Mr. Tascona from the Conservative Party.

Mr. Tascona: Dr. Campbell, were you given an opportunity at all for any consultation with the Attorney General?

Dr. Campbell: No.

Mr. Tascona: Your model bylaw provides a definition of "dangerous dog" and outlines the responsibilities of all dog owners and is a constructive way to try to deal with responsible ownership. Unfortunately, Bill 132 is silent on that. It seems that the rationale we're hearing here today, at least from the police group, is that Bill 132 is a start in stopping the criminal element from using the pit bull breed. If you follow the rationale that it's a good place to start to stop the use of the pit bull breed by the criminal element, the next rationale is that when the criminal element uses another breed, that will be the appropriate time to ban that breed. What do you think about that comment?

Dr. Campbell: I think that's the reason that we have repeatedly stated that banning specific breeds is only a stop-gap measure and is not going to be effective in the long run, whereas broad-based legislation defining a dangerous dog, no matter what the breed, would give the enforcement agencies enough tools to be able to do something without waiting for re-enactment of new legislation.

Mr. Tascona: Has your sample municipal bylaw been followed by any municipalities?

Dr. Campbell: I can't answer that one. I don't know.

The Chair: Thank you very much. Mr. Kormos will ask you a question on behalf of the New Democrats.

Mr. Kormos: Doctor, you know that members of the Ontario government are characterizing you and others like you as a bunch of whiney, liberal bleeding hearts who are letting your affection for dogs override your scientific skills. How do you answer those critics?

Dr. Campbell: The fact that the CVMA produced its position statement in July 2002—and that was actually just a reaffirmation of one that had been previously approved by the council at least five years before that, because we re-examine these things every five years. We're not doing this as a reaction to any legislation. We've felt for a long time that dangerous dog legislation should be exactly that: dangerous dog legislation.

Mr. Kormos: By the way, how's the breed-specific ban doing out there in Winnipeg?

Dr. Campbell: Well, if you want to look at statistics, I have some here. Since the ban was implemented in 1989, there have been over 3,000 dog bites in the city of

Winnipeg; there have been 87 identified breeds and 94 crossbreeds. It doesn't seem to solve the problem of dog bites.

Mr. Kormos: What about the severity of dog bites?

The Chair: Thank you. A question from the government side, Mr. Zimmer.

Mr. Zimmer: In answer to a question from Mr. Tascona, I think you said that the CVMA had not met with the Attorney General. Is the CVMA a member of the National Companion Animal Coalition?

Dr. Campbell: Yes, we are.

Mr. Zimmer: Are you aware that the National Companion Animal Coalition attended a round table discussion in September 2004, chaired by the Attorney General?

Dr. Campbell: That may have slipped my mind.

Mr. Zimmer: Thank you.

The Chair: Are we complete? OK. Dr. Campbell, thank you very much. We appreciate the time and effort you've taken to submit your deputation and to attend with us via teleconference.

Dr. Campbell: Thank you for the opportunity.

The Chair: Just before we recess for the morning, is Arlene Malcolm in the room? Hearing that she is not, this committee is now recessed until 1 o'clock.

The committee recessed from 1152 to 1302.

ANDREW ROMAN

The Chair: Good afternoon, everyone, and welcome back. Our first deputation this afternoon is from Mr. Andrew Roman, who is very helpfully sitting right where he should be. Thank you very much for coming in, Mr. Roman.

Mr. Roman, here are the ground rules, if you haven't been with us at any point in the hearings. You've got 10 minutes to address us this afternoon. If you leave any portion of that time, we'll divide it equally among the parties for questions. Please begin by identifying yourself for Hansard and proceed.

Mr. Andrew Roman: My name is Andrew Roman. I'm appearing on behalf of myself, my spouse and my dog. I have issued or circulated a brief to the committee that they can look at afterwards. I don't intend to read it; I'll merely be summarizing it.

I should mention by way of introduction that I'm a lawyer with a large law firm in Toronto. I've been retained in the past by all three political parties in this Legislature to draft legislation for them, everything from the Environmental Bill of Rights to the Class Proceedings Act and the Electricity Act, so I thought I would take the opportunity to offer some advice on this particular legislation.

I'll start by presenting you with my conclusion or bottom line, in case I don't get there earlier. I would start by saying that there is clear and compelling evidence that pit bulls represent a high risk to public safety, despite the best efforts of some of their more responsible owners to limit that risk. Reports of serious and even lethal pit bull

attacks appear in the media regularly, and the public wants the Legislature to do something about it.

Dogs that have been bred for a particular purpose, in this case fiercely and tenaciously attacking bulls, should be presumed to be likely to do what they have been bred to do. The social utility of permitting breeding for sale, and the sale and purchase of the next generation of pit bulls, is very low, given that there are so many other dogs to choose from.

It's been suggested that defining the breed will be difficult. I disagree; I think it will be easy. I think that understates the skill of legislative drafters, and I can provide you with one definition that would work.

The Legislature also has little to fear from a court challenge; I would submit that that has just about zero chance of success, and I would volunteer on a non-fee basis to represent the Legislature and the government if it is attacked. I like winning cases, and this is one I'm convinced I would win.

The only danger today is that a small but vocal minority will intimidate or confuse the Legislature, causing it to undervalue the public safety of the silent majority that has good reason to fear.

I've set out in my brief, and I won't repeat, the nature of the attack that occurred on my dog and my spouse. I'll let you read that in your full time. The policy basis for the law, I would submit, is what is considered an unreasonable risk of harm or the risk-utility analysis. That is what we do for environmental law, for smoking legislation, for all kinds of legislation, and this is no different. The risk is high in comparison to the utility of owning one particular breed of dog rather than some other.

I do talk also about the inherent unreliability of certain statistics that are used and I think we should rely on them only with great caution. There are a variety of reasons why obtaining statistics is not easy to do, but then most decisions about public safety, as I say in my brief, are not made on the basis of statistics anyhow.

One of the things I do compare that I think I would highlight is the relationship between gun control and pit bulls. A gun is an inanimate object and once you own it and lock it up, it isn't going to do anything unless the owner does something. A pit bull is a living creature with a mind and instincts of its own and unless its owner is prepared to keep it chained up 24/7, when the owner is watching TV or having a shower, that pit bull can be out the window very quickly and attacking somebody. That's why I say that there is no such thing as responsible ownership of anything that dangerous. A person who believes they can control that kind of animal is one who vastly overestimates their own capacities and their own vigilance. It just isn't realistic. The only effective way to ban the deed is to ban the breed. Nothing else will do.

With respect to defining the breed, we have legislation that can define inherently vague concepts like environment or income. One of the easy ways—and there are many ways of defining dog breeds—is to include in the definition not only all breeds that are synonymous with pit bulls, such as Staffordshire bull terriers or American

pit bulls, but also any dog bred or sold by a dog breeder in the last 20 years where the breeder has represented or claimed that the dogs it has bred or sold are pit bulls etc. That's the way our health legislation works, by the way. The Food and Drugs Act defines "drug" as something that someone represents will cure or alleviate the condition of some organ of the body. If someone represents that they are selling pit bulls, I think you should take them at their word, and anyone who has purchased from that person should be deemed to own a pit bull. As I say, that's only one way of defining it, and there are others.

With respect to the court challenge, I would submit that there is no charter right to own any particular breed of dog. The Canadian Charter of Rights and Freedoms doesn't go that far, and the Legislature has the right, apart from that, to legislate in favour of public safety without justifying to the courts how or why it did so or what led it to that conclusion.

That's all I have to say by way of introduction and I'll leave myself open to any questions.

The Chair: Thank you very much. We'll have time for just one question and it would go to Mr. Kormos.

Mr. Kormos: Thank you very much for coming. My choice in questions was to either ask you your opinion of Mr. Ruby's legal skills, recognizing that lawyers are the world's second-oldest profession, or to put this to you: The problem we have is—and I hear you; your position is similar to that of a significant number of presenters. But the position is one that says all of the scientific, professional, acknowledged behaviouralist, academic research—but for Professor Alan Beck, who provided a one-line blurb like the back of a paperback promotion to the government—is that they're all wrong but you. That's where my dilemma is. What are you saying, then, about the scientific community, about the research community, about the academic community, all of whom are not on side with you and others who share your position? And there are a significant number of others who share your position.

Mr. Roman: I would break that down into two segments. One is the vets and the other, I suppose—

Mr. Kormos: You're not going to do the Clay Ruby question?

Mr. Roman: I have no doubt that Clay Ruby is a very competent lawyer. I've known him for probably as long as both of us have been practising.

Mr. Kormos: But you're saying you'll whip his ass if he takes—

Mr. Roman: I wouldn't put it quite that way. I would say that the judiciary is more likely to agree that the Legislature has legislative authority in this area than with the position I'm getting from the newspapers that Mr. Ruby would take.

The other point, however, is that I think lawyers and vets should have a pact. I won't offer veterinary advice if vets don't offer legal advice. I'm frankly not impressed by vets who come forward and try to deal with very limited statistical information without looking at other disciplines such as health and so on. We have PCB bans,

for example. We have bans on a large number of products where the solid scientific evidence is not there. The tobacco industry will tell you now—and I've got a case against them next week—

The Chair: Mr. Roman, I need you to sum up, please.

Mr. Roman: —that cigarettes don't cause lung cancer, and yet we still have laws about that. We worry about second-hand smoke. We have legislation about that. The point is that if you wait until you prove everything to the third decimal point statistically, you would never do anything, and most of the laws that are now on the books would long ago have been repealed.

The Chair: Thank you very much, Mr. Roman. Thank you for coming in today.

1310

DIANNE SINGER

The Chair: Is Dianne Singer in the room, please?

Ms. Singer, welcome this afternoon. You have 10 minutes to address us today. If you leave any time remaining, we'll divide it among the parties for questions. Please begin by identifying yourself for Hansard and proceed.

Ms. Dianne Singer: My name is Dianne Singer. I thank the members of the committee for inviting me to make a presentation concerning Bill 132. I commend the government of Ontario for addressing one aspect of public safety.

I am here to express my grave concerns about the scope of Bill 132 and, if enacted, its effect on responsible, law-abiding dog owners in Ontario. I'm not a lawyer, but reading this proposed legislation causes me to seriously question its scope and intent. It is very cleverly written. I believe it is malevolent. There is a quote attributed to Julius Caesar that I find relevant to this circumstance: "All bad precedents begin with justifiable measures."

I believe that in a free and democratic society, there must be a reasonable connection, a nexus, between the harm that the lawmakers seek to avoid and the remedy that the legislation will use to reduce the harm for a legislative penalty to be valid and enforceable. The nexus needn't be a 100% connection; it just has to be reasonably related. However, if the nexus is too remote, the legislation will be inadequate to solve the problem.

Many presenters have provided factual information concerning dog bites and attacks in Canada. These facts and statistics prove that dog bites and attacks are not made solely or primarily by pit bull terriers. In fact, if pit bull terriers were the threat claimed by the government, there should be far more fatalities than are attributable to the type.

The government, I believe, has not presented any sound foundation for this proposed legislation. I do not believe there is a factual basis for this proposed legislation. The proposed legislation appears to be based on urban myth and emotion.

So, are dog bites and pit bull terriers reasonably related? Dog bites are not solely or primarily by pit bull terriers. So the nexus between dog bites and breed-specific legislation is too remote. The proposed legislation would not be effective to protect people from harm from most dog bites. Since the lawmakers have not established a reasonable nexus between the harm, which is dog bites, and the remedy, which is breed-specific legislation, the proposed legislation should not be passed. If the proposed legislation is enacted, I hope that it is open to attack in court as void and unenforceable.

If a government passes law based on emotion rather than fact and reason, we have lost our moral compass.

My greatest qualm concerning this legislation: I believe that its lack of definition of "pit bull" causes it to be applicable to all short-haired dogs in Ontario, something which hasn't been clarified to the public. Every owner of a short-haired dog should be enraged by this proposed legislation.

In the Hansard report of the January 24 committee meeting, Mr. Abi Lewis, counsel in the policy branch, Ministry of the Attorney General, stated: "A pit bull is not a breed as such, but over the years we have looked at the literature pertaining to pit bulls and there has been a sort of unanimity among dog registries pertaining to the types of dogs that will qualify as pit bulls." Why, then, did the government not include this extrapolated or consensual definition or description of "pit bull" in the proposed legislation? Why does the legislation contain a non-description?

The lack of definition of breed, type, class, menace, bite and attack makes Bill 132 open to subjective interpretation and enforcement by persons untrained in breed recognition and dog behaviour. One should not assume that there is understanding of the definition of any of these terms unless they are defined. The prospect of a peace officer who is unfamiliar with dog breeds and dog behaviour determining a dog's fate is frightening.

Much of Bill 132 condemns a dog for its appearance, not its behaviour. The dog need not have committed an offence to be seized and euthanized or sold to a research laboratory—no investigation, no trial.

I ask why this proposed legislation contains a reverse onus, a presumption of guilt based on appearance rather than action; why it allows municipalities to make laws no less onerous than the proposed legislation, allowing them to make more onerous laws; why it allows for the appointment of what could be a pit bull police; why it allows search and seizure without a warrant and without any investigation on what may be spurious grounds; why it is not clear whether the owner of a dog seized without a warrant is entitled to a court hearing; why search warrants are valid for such a long period of time—double the amount of time under the Provincial Offences Act; why it does not specify that a seized dog must be kept alive, safe and humanely treated until charges against the owner are settled; why it funnels family pets to research laboratories.

I question whether this proposed legislation is fair and just to responsible, law-abiding dog owners. I believe that breed-specific legislation gives a false sense of security to the public and punishes the many responsible owners and their dogs for the acts of the few irresponsible and criminal owners. I direct you to the volume of evidence presented to this committee that breed-specific legislation is ineffective, unworkable and expensive. I direct your attention to the horrors of breed-specific legislation in the UK and Germany: thousands of dogs killed; thousands of owners devastated by misidentification of their dogs; a man shot while walking his dog; dogs shot in their own front yards, shot in front of children—no offences committed, no reason for these deaths other than appearance.

The Chair: Dianne, just to advise you that you have about three minutes.

Ms. Singer: Thank you.

I ask you why jurisdictions have passed legislation prohibiting breed-specific legislation if it's such a good idea. California, Minnesota, New York State, Oklahoma and Pennsylvania are just a few. New Brunswick is in the process of drafting dangerous dog legislation that is not breed-specific. New Brunswick rejected breed-specific legislation after public hearings.

The government is ignoring the fact that only 0.01% of any breed is involved in a biting incident. The government is ignoring the fact that this proposed legislation punishes the 99.99% of dogs and owners who are innocent of any offence.

I ask whether the province and the municipalities are prepared to spend their limited money defending civil suits for seizures, breed misidentification and clarification of vague provisions. I direct you to the judgment awarded against the city of Cincinnati, Ohio for misidentification of dogs. This was one of the catalysts that caused Cincinnati to overturn its 13-year-old breed-ban legislation.

I believe that the proposed legislation lacks safeguards to prevent abuse and oppression and may in fact be oppression of responsible, law-abiding dog owners and their property: their dogs. This proposed legislation would cause Ontario dog owners to become second-class citizens. An enlightened, intelligent government would enact dangerous dog legislation without regard to breed that would place responsibility where it belongs: on the irresponsible or criminal owner.

To assist the committee with its deliberations, I have provided in my presentation a clause-by-clause chart of Bill 132 with my questions and comments. I've also drafted and included sample non-breed specific dangerous dog legislation with clear definitions.

To quote William Oliver Douglas, a famed jurist, "Common sense often makes good law." I ask the committee to implement common sense solutions to the problem of dangerous dogs: dangerous dog legislation that is not breed-specific.

I sincerely hope the government of Ontario has not invested so much in the hyperbole promoting Bill 132

that the government cannot or will not see that there is a simpler, cost-effective, workable solution: dangerous-dog legislation that is not breed-specific. That would be fair and just to all and provide the element of public safety which was the genesis of this entire situation. Thank you.

The Chair: Thank you very much for having come in. Unfortunately, you have used up your entire time and there isn't any remaining to ask you questions, but thank you again.

1320

MIKE DABROS

The Chair: Are Mike Dabros and Jean Dabros in the room?

Please be seated and make yourself comfortable. As you know, you've got 10 minutes to address us. If you leave any time remaining, we'll divide it among the parties for questions. Begin by identifying yourselves clearly for Hansard, and then proceed.

Lieutenant Colonel Mike Dabros: I'm Lieutenant Colonel Mike Dabros. I'm a Canadian Forces officer, a tactical helicopter pilot. This is my wife, Jean. She is an elementary schoolteacher in Gananoque. We come from the town of Kingston.

I mention our professions to emphasize the fact that we are not drug dealers, gang members or any of the other things the media frenzy would lead people to believe that owners of our dogs actually are. We feel we are ordinary citizens, representatives of responsible dog owners from across the province of Ontario. We are here to speak for our dogs, for our children and for our family.

We are in favour of increasing public safety with respect to dangerous dogs, but we agree with the majority of the expert advice that this committee has received over the days of hearings: Breed-specific bans are not a just and workable solution to the problem of dangerous dogs.

We have never been politically active in our 40 years of responsible citizenship. It took the injustice and the unreasonableness of Bill 132 to accomplish that. We truly feel that we are here fighting for our family's way of life as we know it against our own government, as some kind of twisted reward for close to 40 years of responsible dog ownership.

With this law, the government of Ontario will come into our home and criminalize our way of life with absolutely no basis for doing so. We and our dogs have done nothing wrong, nor are we prone to, yet we are guilty, without even the opportunity of defending ourselves. We want you to know how this bill will impact on the other innocent victims in this debate: the responsible owners and the good dogs.

We both grew up in homes where purebred dogs were common. We experienced many breeds as pets and as pets of friends: spaniels, boxers, poodles, Dobermans, German shepherds, Dalmatians, pointers and Labrador retrievers, to name a few. All were capable of biting, and we have more than one memory of those dogs having done just that. We owned a dog early in our marriage that

displayed temperament problems. He was not one of the banned breeds. As a result, we had him put down at the age of four.

When we started our own family, we wanted our children to experience the joy of growing up around dogs, but because of normal parental concerns with small children, temperament became paramount; in fact, it was our prime concern.

The beauty of purebred dogs is that they breed true to temperament or whatever characteristics are emphasized in their breeding. We consulted a breed referral service that was sponsored by the kennel club—we lived in Halifax at the time—and they recommended what was to us a little-known breed called the Staffordshire bull terrier. We were told that no breed is more tractable or more trustworthy with children. We are here to tell you that they were absolutely correct, and based on more than 15 years with these dogs and exposure to hundreds of them at dog shows and social events over that time, that conviction has been strengthened. We've never seen one bite, much less show any form of human aggression, including growling at people. In fact, there is not a single case of an unprovoked bite by a purebred, CKC-registered Staffordshire bull terrier in this country, a record that very few breeds can claim. The fact that the government must know this and is still planning to ban the "nanny dog" is, to us, a simple absurdity.

Our children have put these dogs to the test. There are photographs of our dog with our children in attachment A. They have essentially been raised by these nanny dogs almost as siblings. The dogs would fret over first bike rides and first days of school, and they would respond with joy each time a child returned safely to the fold. They endured hours of "dress up," and they are always included in whatever child's game is going on around the house. These dogs are "as advertised." They are the best breed, bar none, with children.

There is one point I would like to make that is a bit of a departure from my prepared presentation. I know it has been stated in the record of these hearings that the Bill 132 definition of "pit bull" is the same as that used by the city of Kitchener. This is factually incorrect. The Kitchener definition, which is attachment C, does not include CKC- or AKC-registered purebred Staffordshire bull terriers and American Staffordshire terriers. This makes the two definitions fundamentally different. I believe this misunderstanding highlights the superficial level of research that has gone into this bill.

I've stated that the breed-specific provisions of Bill 132 have radicalized us, our families and our friends, and we've collectively realized, "My goodness, but if the government is so wrong about the Staffordshire bull terrier, how wrong can they be about these other breeds that they've identified?" Our conclusion is, very wrong. To us, the Staffordshire bull terrier is simply the exception that proves the rule: There is no such thing as an inherently dangerous dog or breed of dogs.

We've listened to those other owners protect their families and their pets over the course of the last several

months, and we've realized that their experience isn't unlike our own. They're responsible owners of good dogs and, unbelievably, the government of this province is poised to legislate them out of existence as well, while doing nothing to address the real problem of truly dangerous dogs and their owners.

We're incredulous of people who have never owned one of these dogs, who can't even identify one, much less appreciate their true personality and temperament, telling us that it is in their nature to be vicious, inherently dangerous, while the vast majority of experts have been emphatic in coming in here and telling you otherwise. The question is, are you listening to the facts with an open mind, the way the legislators in New Brunswick did?

We've been around these dogs for over 15 years, hundreds of these dogs that never once have been seen to show any sign of aggression to humans, and we can say with the conviction of parents of three young girls that they are not inherently dangerous, certainly not a breed apart, but rather inherently loving and caring pets. Meanwhile, Bill 132 would unreasonably destroy them over time and, as a result, destroy the families that have chosen to make them part of their lives.

We walk our dogs on crown land near our home, always on a lead, and frequently there is a loose golden retriever that will charge us in an aggressive manner, off the lead, growling, its hair standing up, that on one occasion attacked our dog, which was on its lead. That's the dog that scares us. Yet it's our dog that is banned, our dog that has to be controlled, our dog that has to be muzzled, our family that has to be sanctioned. If ever anything serious happens as a result of those encounters with that dog, it will be our dog's fault because of the shape of its head, the look of its ears and the way it wags its tail. Unbelievable; that's not reasonable legislation.

In fact, given its personal and intrusive nature, we're tired of hearing the claims of the politically partisan that this is reasonable legislation. It's not. Reasonable legislation that is truly in the interests of public safety does not radicalize ordinary citizens and their families, as is happening with this bill.

The Chair: Mr. Dabros, you have about three minutes.

Lieutenant Colonel Dabros: Thank you.

Reasonable legislation does not ordain the eventual destruction of tens of thousands of innocent and reliable dogs that are statistically far less likely to bite than other dogs that apparently do not concern this government. Reasonable legislation does not force ordinary, law-abiding citizens to seek costly litigation to protect their rights and those of their families from poorly researched and superficial law, whose illogical, breed-specific foundation and reverse-onus provisions will not likely withstand sober judicial consideration.

Responsible legislation that is supposedly in the public interest does not deprive law-abiding, responsible families of the right of owning a dog that the experts say is the most reliable and stable with children, indeed a breed

that's been bred for over 100 years to ensure its lack of human aggression, a characteristic of temperament for which it breeds true.

Reasonable legislation would not deny my children, my grandchildren and my grandchildren's children the right to be raised in the same loving family environment that they themselves knew, one that includes the breed of choice insofar as their trustworthiness and their reliability are concerned. Reasonable legislation would focus on the deed and not on the breed, and protect all potential victims from all dangerous dogs, and it would respect the findings of the Courtney Trempe inquest.

We support the principle of Bill 132; that is, the improvement of public safety through better law to regulate all dangerous dogs. Its breed-specific provisions will not accomplish that, while creating all manner of new victims, ourselves and our family included. This bill needs to demonstrate that we're serious about taking action on all manner of dangerous dogs, not just the extremely small percentage that might be controlled by eliminating tens of thousands of innocent ones.

The government needs to think about what it will tell the next victim whose child gets mauled by a German shepherd, a Rottweiler or a Labrador retriever, something that will inevitably happen, not only because it's statistically more likely but also because Bill 132, as written, does little to address truly dangerous dogs of all breeds. At that point it will be obvious that the emperor has no clothes, but at that point it will also be too late.

Do the right thing with Bill 132 and the opportunity it represents. Listen to the experts and the people of Ontario on this issue and forgo breed-specific legislation in favour of strong dangerous-dog legislation that puts the onus on responsible owners.

Thank you.

The Chair: You've used up virtually all of your time and unfortunately we won't have an opportunity to ask you a question. Thank you very much for having come in today.

Mr. Kormos: Chair, with respect to the material received, the fact that these dogs dress up as women in their private lives is none of our concern, but did they know that these photos were going to be—

The Chair: The manner in which the dogs do dress may be interesting, Mr. Kormos, but it is not only beyond the scope of these hearings, it is beyond the scope of the provincial government. Thank you.

1330

MARK FOX

The Chair: I'm informed that Leslie Warren is not in the room. Is Mr. Mark Fox in the room?

Mark, come on up. Have a seat and make yourself comfortable. You have 10 minutes to address us today. If you leave any time, it will be divided among the parties for questions to you. Please begin by stating your name for Hansard and proceed.

Mr. Mark Fox: Thank you very much. My name is Mark Fox. I will be very brief. I come before you not as a representative of any group but as an individual citizen residing in Toronto. I have not come to this meeting with reams of facts and figures. Instead, I've come to tell a story, someone else's very personal story.

Last Friday, Mr. Terry Kelly and his son, Max, joined our family for dinner to celebrate my son's birthday. During the dinner I mentioned that I would be presenting to your committee. It was then that Terry told me the story of Maggie.

About two years ago, Terry met Maggie at the Toronto Humane Society. Terry fell instantly in love. Maggie was a seventh-month-old puppy purported to be a terrier cross. Maggie had been returned three times and was sporting a cut that required 32 stitches to close. Once home, Maggie proved to be a loving pet. She kissed, she talked, and never growled. The entire family loved Maggie, and Maggie loved them.

Over time, it became apparent that Maggie was a bit different from other dogs. She was unusually alert to movement, and she was fast. As she matured, Maggie's powerful body and oversized jaws became apparent. The vet told Terry that Maggie was a purebred pit bull. Mindful of others' perceptions of pit bulls, Terry spent many hours training her so that she would always respond to commands, and she was always on a leash when walked.

Nevertheless, Maggie's breeding broke through: If it moved, she was interested. Chasing after balls was easy; grabbing a pigeon out of the air was more fun. One day, Maggie got into a fight with a German shepherd in a nearby park. True to her breeding, Maggie was not easily deterred. The shepherd lost, and almost died.

Terry came to the realization that he owned a genetic freak. Its jaws and body were bred for a purpose. Its zeal for the fight was unwavering. Though a loving pet, Maggie was always a little on edge, a little like a PlayStation with a bomb inside: hours of fun, but not sure if and when it would blow up. Ever aware of Maggie's high-strung state, Terry's son Max was always making sure that Maggie would not escape the confines of their home. Maggie was no longer welcome at the park. Terry and Maggie would have to roam the streets late at night. If it moved and was an animal, Maggie was ready to go after it.

In the end, Terry had to find a new home for Maggie. The Kelly family home environment changed, and Terry could not rely on Maggie's behaviour.

What is the moral of this story? It's very simple. When you breed a dog to be a superior killer, the breeding will eventually break through regardless of how caring and careful the owners are. As my wife said, it's nature over nurture.

I am proud to be Canadian. I am proud to live in a multicultural city like Toronto, where respect for each other's way of life is paramount. I'm also proud to live in one of the safest cities and countries in the world. In a civilized society, we have to make hard choices. Is the

freedom to own a gun more important than the safety of others? Not in Canada.

Therefore, I must ask you, is the freedom to own an animal bred to kill more important than the safety of others? I hope not. Thank you very much.

The Chair: We will have time for some questions, beginning with the government side.

Mr. Dave Levac (Brant): Thank you for your story. Have you been aware of some of the comments made in terms of legal challenges, that some people believe it won't withstand the test of a legal challenge or that it will withstand the test of a legal challenge?

Mr. Fox: I have not been following that; no.

Mr. Levac: Then I won't proceed down that avenue. What I would suggest—I saw a video provided to me by a constituent a while ago that indicated that even if “breed-specific” were removed, there would still be concerns about pit bulls in leash-free parks, that it's advised by some experts that pit bulls not be allowed to participate in leash-free parks.

Mr. Fox: I have not seen the video.

Mr. Levac: OK. That's all. I don't want to pursue that.

Mr. Tascona: I want to thank you for coming here today. You had decided to present here before you had met this individual for dinner, I take it. What was your view before you discussed it with this individual?

Mr. Fox: My view was the same. That's why I responded to the committee; that's why I wanted to come here. But the approach I was going to take was based upon the information that was available to everybody, as opposed to this personal story. I thought this personal story was a lot more compelling.

Mr. Tascona: I understand that. What we've heard in the hearings is that if any dog is not treated properly when they're a puppy, they're going to develop a disposition problem. That's something we'd like to see perhaps put into this legislation to deal with responsible dog ownership and with vicious dogs per se, in terms of providing methods for better and more responsible dog ownership. Would you agree that it should be something we should also be looking at in this legislation?

Mr. Fox: I certainly commend the committee for going in that particular direction. I think everybody's in support of that. The Toronto Humane Society's in support of that. I agree with that position.

Mr. Tascona: In terms of this particular puppy, it was seven-months old. Did the Toronto Humane Society ever tell your friend where they got the dog or who trained the dog or who had been with the dog?

Mr. Fox: The person to whom I'm referring didn't know at the particular time, but afterwards, through investigation, found out more about it. I believe that Terry is now one of the directors on the board of the Toronto Humane Society, actually.

Mr. Tascona: You're going to get a situation where you have one particular dog—and I wouldn't want to extrapolate to an entire group from one experience with a dog. You can take it from me that I believe what you're

saying. But I think the danger we're trying to deal with here is that when we're dealing with a number of different definitions under the legislation—I think you've seen those and you've heard different types of issues with respect to whether you can determine what the breed is. They say there's no specific breed when they're trying to identify what would be a dangerous dog in terms of a pit bull terrier. That's where I think there are some issues. I think you heard the previous speakers and what their experience was with the Staffordshire terrier, and it was a positive one. So that's something we have to be looking at in the legislation before we too broadly define what we're trying to deal with here in terms of pit bull terriers. Would you agree?

Mr. Fox: I've looked at the same statistics, I believe, that have been presented to you over and over again. The statistics out of the US say that over 50% of the fatalities due to dog bites were due to pit bulls and Rottweilers. The same papers then go on to say that it's probably the case that the number of dogs of those breeds is relatively low, so that the probability of attack with a dog like that is going to be much greater than other dogs because there are a whole lot of other dogs out there.

Mr. Tascona: If you have that document, if you could table it with the committee, we'd appreciate it.

Mr. Fox: Yes, I've got it right here.

The Chair: Mr. Fox, thank you very much for having come in today and for delivering your deputation.

1340

HUMAN-ANIMAL BOND ASSOCIATION OF CANADA

The Chair: Is there a representative from the Human-Animal Bond Association of Canada in the room?

Welcome. Please sit down and make yourself comfortable. You have 15 minutes to address us this afternoon. Please begin by stating your name for the purposes of Hansard. If there's any time remaining, we'll divide it among the parties and one or more will be able to ask you some questions. Please proceed.

Ms. Margaret Schneider: Thank you. My name is Margaret Schneider. I'm here as a member of the board of directors of the Human-Animal Bond Association of Canada, known as HABAC. HABAC is one of many organizations worldwide which promotes the understanding and appreciation of the relationship between humans and animals.

HABAC is very concerned with preventing dog bites in general and serious dog bites in particular. However, we oppose breed-ban legislation because it has not been shown to be an effective method of prevention. HABAC supports vicious dog legislation that would: focus on dangerous dogs, not specific breeds; provide the legal framework to effectively lay charges against irresponsible owners; promote responsible dog ownership and owner education; and hold irresponsible owners accountable by providing legal support to enable victims of vicious dog bites to recover damages or have other

recourse, not only when a dog seriously injures a human, but also when it injures another dog.

I've attended some of these hearings and have read the transcripts in Hansard and, on a personal note, I must say that I am appalled at the lack of support from law enforcement that the victims of dog bites and their families have received.

In addition to my responsibilities with HABAC, I'm also a registered psychologist with a background in social and community psychology. I'm a professor at the University of Toronto, where I teach graduate courses in research methods and chair the ethics review board, which reviews all research proposals at the Ontario Institute for Studies in Education.

I would like to begin by commenting on the statistics that have been cited during these hearings. First, in order to demonstrate that breed-ban legislation works, you need to have established a reliable baseline in order to compare bite frequencies before and after the enactment of the legislation. Because frequencies of dog bites would be expected to fluctuate over time, the baseline has to be established through several measurements at regular time intervals. In other words, we'd need to know, reliably and accurately, the rate of dog bites over a period of time before breed-ban legislation is enacted, and then we'd need to have a reliable and accurate count of bites over a period of time following the enactment of the legislation.

Do we have a reliable and accurate measure of dog bites? I doubt it. Many dog bites are not reported, even when a victim seeks medical treatment, because dog bites are not included in mandatory reporting laws. This, in and of itself, brings the statistics into question. We don't even have reliable figures regarding numbers of dogs and number of dogs in each breed. Any statistic about the proportion of bites that any breed accounts for is suspect because they are based on incomplete data, and that includes Alan Beck's data, which was the focus of considerable discussion a few days ago.

Even if the statistics were reliable, there is still the question of cause and effect, whether any change in the rate of dog bites, including vicious ones, could be attributed to the legislation. There are many reasons for fluctuations in the rate of dog bites, including just random chance. Furthermore, any legislation addressing dog bites and safety, regardless of whether it's breed-ban or vicious dog legislation, would likely, in and of itself, result in some transitory changes. This is because the process of passing the legislation might heighten people's awareness of dog bite risk and perhaps they'd be more careful. We call this the Hawthorne effect, no doubt familiar to those of you who took psych 101.

What this means for dog bite statistics is that, even when they are accurate at any given time, they also need to be tracked over several years before and after the introduction of legislation to determine whether the legislation is effective. To my knowledge this has not been done systematically, precisely the point that Lori Gray made a few days ago.

The final issue regarding statistics is the size of the effect. When we look at statistics on frequencies of dog bites before and after the passage of legislation, it's important to ask how much of a difference in the number of bites before and after represents a real change as opposed to a change just due to the usual, random variation in number of bites from year to year. Let's say a particular town had 100 reported dog bites in 2002, then enacted dog-bite bylaws in 2003, and in 2004 had 98 reported dog bites. Would those statistics convince you of the efficacy of the bylaws? Probably not. What about if the proportion was 100 to 90? Well, maybe. What about if the proportion were 100 to 50? Well, yes, that's pretty convincing.

As you can appreciate, there is a grey area where we might not really be able to tell from the numbers alone whether or not the bylaws were effective. A statistical analysis will identify the point at which we can be reasonably sure that the difference between the before and after figures are the result of the legislation rather than the result of random chance. I have not seen any proper statistical analyses applied to any of the figures cited here or elsewhere. They may exist, but I haven't seen them.

Anyone, including myself, who has worked in the social service sector will tell you that, before the government commits funding to a prevention program, it will ask for evidence that the program will be effective. Yet this government is proposing legislation aimed at preventing dog bites without any evidence of its efficacy; legislation that, according to testimony, will be extremely expensive, and that's bad public policy.

At this point, I'm sure I don't have any friends in the room. I've just thrown out the statistics that both sides have been using to support their positions. However, to me we don't need statistics to conclude that the proposed legislation is doomed to failure simply because it's based on faulty logic, the same faulty logic that leads some people to believe that racial profiling in humans is a sound law enforcement strategy.

First, let me say, before pursuing this analogy, that I don't want to trivialize racial profiling. It's an intolerable infringement on human rights, but we also know that the logic behind it is faulty, that it is an ineffective method of crime prevention and it does not get at the root causes of crime. The reasoning behind it is the result of psychological gymnastics that have been well documented in the scientific research in the area of social psychology, something in which I am very well versed. Much of what I'm going to summarize now can be found in the *Handbook of Social Psychology* in a chapter concerning prejudice, discrimination and stereotyping.

It's human nature to categorize our environment, including the people in it. It helps us view an otherwise chaotic world in an orderly way, and then, based on our experience, we make benign generalizations that often work to our benefit, like police officers are our friends or children like ice cream. These generalizations stop being

helpful when they're based on biased or inaccurate information.

One of the ways this happens is when people are different from ourselves in obvious ways, for example, skin colour. We are more likely to link them with particular types of behaviour. It's a form of tarring with the same brush and is referred to as "categorization disadvantage." For example, until not long ago, when a Caucasian committed a crime, the news media would typically refer to the suspect as a "person." When a person of colour committed a crime, the person became a "black" person, thereby heightening our awareness whenever a black person committed a crime and setting the stage for the establishment of a stereotype.

The stereotype is reinforced by what's called "matching advantage." In other words, we recall information that's consistent with stereotypes and dismiss information that's inconsistent. We pay attention when a crime is committed by a member of a particular racial or ethnic group, but dismiss it as an exception to the rule when it's committed by our own racial or ethnic group.

Similarly, we remember dog bites involving so-called pit bulls because they fit the stereotype and forget bites involving other breeds that we find more likeable, or, as we've heard in other presentations, erroneously attribute the bite to pit bulls.

This is the psychological foundation for the illusion that racial profiling and breed-ban legislation work. Both these strategies for crime prevention and bite prevention, respectively, are based on illusions that are a function of the way in which humans filter information.

Sure, racial profiling will scoop up the occasional criminal, regardless of the race or ethnic group, but at what cost to innocent people and to human rights? Similarly, banning a particular dog breed, even golden retrievers, will scoop up the occasional serious biter, but at what cost to the well-behaved dogs with stable temperaments? We are still left with the problem of how to prevent dog bites from breeds that are not named in the legislation.

What I've tried to demonstrate here is that there is no scientific evidence that this legislation will be effective; and further, there is scientific theory based on research that indicates that the foundations of the legislation are illogical. That's bad public policy. Dog bites are a serious health problem and the people of this province deserve legislation that is based on informed opinion, not just an emotional best guess.

Over the last two weeks, this committee has heard a consistent plea for an educational approach to responsible dog ownership. It's been my experience as an educated dog owner and as a dog trainer with the North York Obedience Club that most dog owners know dangerously little about canine behaviour. For example, they're unaware of the range of behaviours that dogs will exhibit prior to biting, starting with lip licking, yawning, averting eye contact and so on, and then escalate to other more obvious signs.

The most common comment heard following a dog bite is, "I don't understand it; he was wagging his tail," demonstrating a total misreading of the various components of tail-wagging—height, amplitude and speed—which communicate the dog's intention. Any owner who says, following a dog bite, that the attack came out of nowhere without warning, simply does not understand dogs and how they communicate.

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I'm not blaming the victim. Our society has been led down the garden path by Walt Disney and a host of other media which portray dogs as being as benign as teddy bears. Mr. Bryant himself has fallen for this portrayal, as revealed by his comments to the effect that everyone is an expert on dogs. I beg to differ. The consequence is that when dogs bite, we blame the dog rather than placing the responsibility on the owner, who should have recognized the signs and taken steps to prevent the bite. Given the right combination of circumstances, any dog will bite, but not until it has given multiple warnings.

I've included an excerpt from Jean Donaldson's book *The Culture Clash*, which elaborates on this. It speaks to the importance of education and responsible dog ownership as an integral approach to the problem of dog bites. I see nothing about education and responsible dog ownership in this legislation.

The Chair: Just to advise you, you've got about three minutes.

Ms. Schneider: Thanks. I'd like to add that that book is considered to be a classic.

Jean Donaldson and others often stress the importance of early socialization of puppies in producing stable dogs with good temperaments, yet every day, hundreds of dogs bred in puppy mills are sold through retail outlets and so-called animal rescue missions—puppies that have been minimally handled and socialized in the first three or more months of life. What do you think would happen to a child's social skills if they were isolated in the first few years of life? Well, that's what happens to puppies. Bite inhibition is a social skill that dogs must learn, and, according to Jean Donaldson, lack of proper socialization is a significant cause of aggression in dogs. I don't see any government initiative that gives animal protection the resources they need to shut down puppy mills.

This legislation will not only be ineffective, but it's also inhumane. I hope we have time for questions, because I have a couple of questions for you. My veterinarian, a past president of the OVMA, has told me that vets categorically will not put down healthy, stable dogs. The task will fall to shelter workers, who, according to research conducted by Arnold Arluke, a professor at Northeastern University, already experience a considerable level of stress and distress at having to put down the numbers of unwanted dogs that they're currently dealing with. What do you have to say to them? What do you have to say to a hypothetical family who adopts or purchases a puppy where the parentage is unclear and, since it's often difficult to identify breeds in puppies, finds six or eight months later, long after they've fallen in

love with it, that it resembles a so-called pit bull? Are you really prepared to tell that family that their dog has to be killed? I'd like you to think about it.

Applause.

The Chair: Please come to order. Thank you. That just about exhausts the time we have available for you. I'd like to thank you very much for having come in today.

DIANE PORQUET

The Chair: Our next deputation is by teleconference from Ottawa. Ms. Porquet, are you on the line?

Ms. Diane Porquet: Yes, I am.

The Chair: Welcome, this afternoon. This is Bob Delaney. I'm the Chair of the standing committee on the Legislative Assembly. You'll be speaking before us here at Queen's Park in Toronto. Sitting at the table around me are members of all three parties. You have 10 minutes to address us this afternoon. You can take the time and use it as you wish. If there's any time remaining, we'll divide it among the parties. I'll identify the person speaking and their party affiliation. Please begin by pronouncing your name very clearly for Hansard and proceed.

Ms. Porquet: My name is Diane Porquet. I wanted to present in favour of the bill. I have done some research and come up with the 10 most popular pro-pit-bull arguments, and I'd like to read those to you and refute them. As you've said, once I'm finished, if there's time, I'd be happy to answer questions or to discuss any of my points.

Argument number 1: There are no bad breeds, just bad owners and breeders: To me, this argument sounds like the NRA dictum, "Guns don't kill people; people kill people." In a perfect world, everyone would be responsible and well behaved all the time and we could all own guns and no one would ever get hurt. In a perfect world, all dog owners and breeders would be responsible and reputable and dogs would always be perfectly behaved. But let's get back to the real world. Not all owners and breeders are responsible. Therefore, there are many very dangerous pit bulls out there. As long as there are pit bulls, there will be owners who just shouldn't have them. Even if these people are beyond reproach, the fact remains that pit bulls are aggressive by nature and that their killer instinct will always prevail, no matter how loved or well treated the dog. We can either sit around hoping that these bad owners and breeders change their ways or we can naively try to legislate them into conformity. I don't have much faith in either of these options. Please do 99.9% of the population a favour—that is, those of us who don't own pit bulls or make a living breeding them—and ban the dogs. This is the only effective way to prevent pit bull attacks.

Argument number 2: If you ban pit bulls, owners who want aggressive dogs will move to other breeds and encourage bad behaviour in these dogs. This argument I would like to answer with a quote from D. Sankey's

Internet forum: "This is like saying that if guns are banned, we'll just see a massive upsurge in knifings, whippings and slapping people with bananas. Maybe so, but these things are a lot less dangerous, hence the ban on the most dangerous things."

Banning pit bulls won't prevent someone from getting a different breed of dog and training it to be vicious; that's true. That is why the government of Ontario will have to revamp some laws. Dogs over a certain size, for example Rottweilers, that can pose a danger to people's safety should be leashed and muzzled at all times when outside their homes. Fines and jail time should be greatly increased and enforced in order to be an effective deterrent, as well as removal of the dog from the home.

Argument number 3: All dogs, even the most well-socialized, bite. It's true that any dog can bite, but very few breeds can shred a person to pieces. Many animals will bite people, but it's not necessary to ban them, because they don't have the size, the endurance and the aggression of pit bulls. Pit bull attacks are more likely to be fatal. I personally would much rather take my chances with an enraged poodle than an enraged pit bull.

Argument number 4: Only a small percentage of dog bites are caused by pit bulls. It may be true that other breeds bite people more often, but most of these other breeds are much less likely to seriously injure a human being.

Argument number 5: Most pit bull attacks are the result of the dog's being provoked. This again sounds like NRA reasoning, for example, "It's not the land mines' fault that people step on them." It's irrelevant whether the dog is provoked or not. What matters is the outcome. When a pit bull attacks, whether provoked or not, the victim is badly injured, psychologically traumatized or even killed.

Argument number 6: Banning a breed does not prevent dog attacks. If there are no more pit bulls, then there will be no more pit bull attacks. This is a breed that can attack and kill people. This is an easily preventable form of death: Ban the dogs.

Argument number 7: Winnipeg has had no significant decrease in bites since the ban. It is only in 2002 and 2003 that there were any significant decreases, and city officers say it's because they started enforcing the dangerous dog act. Perhaps there wasn't a decrease in overall bites, but there was a very definite decrease in pit bull bites. A quote from CBC News: "Winnipeg became the first Canadian city to ban pit bulls in 1990, a year after an attack left a young girl badly disfigured. Since then, incidents involving pit bulls have fallen from about 25 a year to one or two."

A quote from the Winnipeg Sun, January 2005: "Dog bites in Winnipeg have been reduced by nearly 50% since the city banned pit bulls in 1990.... While Manitoba's neighbour pushes a bill to disallow the breed, there's no question that a pit bull prohibition has made Winnipeg far safer than it was before the ban kicked in nearly 15 years ago. You can argue the clampdown's merits and logic, but not its results. Winnipeg had 310

bite attacks in 1990, the year in which ownership of that breed of terrier became illegal within city limits. It's now at little more than 160—a drop of nearly 50%.”

Argument number 8: We don't need a breed ban; we need the dangerous dog legislation to be enforced. The problem with choosing to enforce dangerous dog legislation rather than banning killer dogs is that it is a reactive rather than a proactive approach. We must wait for someone to be attacked, maimed or possibly killed before these negligent or abusive owners can be found and punished. If we're looking to prevent dog attack fatalities, we need to ban the breeds that can kill. Pit bulls and Rottweilers, according to US statistics, account for nearly 50% of all dog attack fatalities. Of 200 dog attack fatalities in the US between 1979 and 1996, pit bulls accounted for 60 of those 200 and Rottweilers accounted for 29.

If we're looking to reduce the amount of dog bites, then we need to strengthen and enforce muzzle and leash laws and to severely reprimand those who disregard these laws with hefty fines, jail time and removal of the dog. But the only truly effective way to prevent dog attack fatalities is to ban the dogs that can kill.

Argument number 9: Pit bulls are loveable dogs and a joy to own. Well, I'm sure zookeepers love their lions and tigers and grizzlies and crocodiles; that doesn't mean these animals are suitable as pets.

I quote an article by Ike Awgu in the Ottawa Sun, October 2004: “July, August and September 2004 saw four violent pit bull attacks in Ontario, all of which ended in severe injury to the victims. Important to note is that none of the pit bulls involved in the incident showed any signs of aggressiveness prior to the attacks. All of the attacks were sudden and unexpected.”

Pit bulls were created and bred to kill other dogs, not to become household pets.

Argument number 10: If we ban all potentially dangerous things, we'll have to ban everything. Well, not all potentially dangerous things can kill, whereas pit bulls definitely have. Many things are banned in the name of public safety. For example, baby walkers were considered a danger to babies and were consequently banned. Pit bulls are also a danger, not only to babies but to all members of society. Therefore, they should also be banned.

As my final word, someone posted this on the Internet forum I mentioned before, and in my opinion this person says it best: “Thinking of the victims, it's difficult to look with sympathy upon those who gripe about muzzling, leashing and having to face the eventual prospect of owning a less violent animal. The parents of these victims are often having to face the immediate prospect of bringing up a very different daughter or son.”

And in the words of Jon Katz, in his article: “The rights, safety and welfare of children take precedence over even the most beloved pets.” This is the bottom line. This is what we must not forget.

The Attorney General is not proposing to ban all dogs, only one particularly vicious and dangerous breed. There

is a multitude of other breeds that dog lovers can choose to own instead. A person's right to be safe far outweighs the pleasure a pit bull owner derives from owning one as a pet. The Attorney General is also not proposing a mass pit bull slaughter. Pit bull owners would be allowed to keep the pit bulls they presently own until these animals die.

What the Attorney General is trying to do, as I understand it, is to protect the public from any further pit bull attacks. If the government of Ontario chooses not to ban pit bulls, how will it explain its decision to the victims of the future? What will it say to those people suffering nerve damage or coping with the loss of their eyesight or even of their face?

The Chair: Ms. Porquet, you've got about one minute remaining, if you want to sum up.

Ms. Porquet: Yes, I'm finishing up.

What would it say to those children growing up disfigured or to the people who have lost a loved one to a vicious pit bull attack? You have the opportunity right now to prevent any more attacks, that are sure to come. Please take it.

Now I'm done.

The Chair: Thank you very much for your deputation this afternoon. We may have time for one brief question from the Conservative caucus.

Mr Miller: Thank you very much for your detailed presentation this afternoon. One of the problems we've heard about this bill being discussed today, Bill 132, is the definition of a pit bull. How do you describe a pit bull? It's been pointed out that a pit bull is not a specific breed of dog.

Ms. Porquet: Well, from what I read in Bill 132, it says “pit bull” includes a pit bull terrier, a Staffordshire and all that. The way I would describe it is just the look of it, the extremely strong jaw. The dogs that have those characteristics, that are strong and have that jaw—

Mr Norm Miller: In your point 3, you talked about the dog bite, and the size and endurance. Does this mean it's a big dog?

Ms. Porquet: Pit bulls are not huge, but yes, they're a good size. They're a medium to large size and very strong.

Mr Norm Miller: One of the breeds that's listed is the Staffordshire bull terrier. That is actually quite a small dog. It's 14 inches tall and about 30 pounds.

Ms. Porquet: But it has the same characteristics and the same jaw strength. As I understand it, the people who bred these dogs put certain dogs together that had these characteristics with the jaw and so on. So it's not necessarily how big it is but how strong it is, especially in the jaw.

The Chair: Ms Porquet, thank you very much for joining us this afternoon by teleconference and for making your deputation.

Ms. Porquet: Thank you for listening.

The Chair: Is Mr. Michael Schwartz in the room? OK, this committee will stand in recess until 2:15.

The committee recessed from 1404 to 1415.

NATIONAL COMPANION ANIMAL COALITION

The Chair: Let's please come back to order. Our next deputation is from the Pet Industry Joint Advisory Council of Canada. They're joining us by teleconference from Ottawa. Can you hear me?

Mr. Louis McCann: Yes, Mr. Chairman.

The Chair: This is Bob Delaney speaking. I'm the Chair of the standing committee on the Legislative Assembly. You're speaking to us today at Queen's Park in Toronto. At the table, virtually before you, are members of all three parties. You've got 15 minutes to address us today. You can use all or part of that time. If any remains, we'll divide it among the parties for questions. Please begin by identifying yourself for the purposes of Hansard and then proceed.

Mr. McCann: My name is Louis McCann and I am the executive director for PIJAC, the Pet Industry Joint Advisory Council of Canada. We are Canada's national pet industry trade association. I am addressing you today in my capacity as chairperson for the National Companion Animal Coalition, better known as the NCAC. On behalf of the NCAC, I would like to thank the members of the committee for allowing us the opportunity to comment.

Citizens deserve to be safe in their communities. Dogs are an important part of many people's lives. We all have an interest in finding an effective means to deal with aggressive and even dangerous dogs in our communities.

Are breed bans a help or a hindrance to responsible pet ownership? The National Companion Animal Coalition was created in 1996 to promote responsible pet ownership and enhance the health and well-being of companion animals. Other than PIJAC Canada, members of the coalition include the Canadian Federation of Humane Societies, the Canadian Veterinary Medical Association and the Canadian Kennel Club.

NCAC member organizations are national associations representing the vast majority of animal shelters and pounds, veterinarians, dog breed registries and the pet service industry. Irresponsible pet ownership and dangerous dogs have a negative impact on our members. However, as front-line organizations having to deal with both the dogs and the owners on a regular basis, we also understand that there is no simple solution. Some apparent solutions, such as breed bans, may even be counterproductive.

The issue of dangerous dogs is of great importance to the coalition, as evidenced by the series of tools and documents produced under the NCAC banner. It started in 1999, when we produced and distributed a sample animal control bylaw for Canadian municipalities. This document addresses many issues relating to animal control, including the issue of dangerous dogs.

Because children are often the victims of dangerous dogs, a few years later the coalition launched our Web site, www.dogsandkids.ca, to guide children and their parents about behaviour around unknown or potentially

dangerous dogs. This project was implemented in collaboration with the Canada Safety Council.

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In 2003, the coalition went ahead with the design and distribution of an informational pamphlet directed at prospective dog owners to help them make the right choice and understand the importance of responsible pet ownership.

Our work continued in early 2004, when the NCAC produced a statement explaining why breed bans are ineffective as a solution to the problem of aggressive dogs and recommending alternative approaches. A copy of this document is attached to the presentation that was sent to the clerk for your consideration. A copy of all the other NCAC documents can be found on each of the member association's respective Web sites.

Also in 2004, the NCAC took part in the first round-table consultation at the invitation of Ontario's Attorney General. More recently, we submitted an article on breed bans to Forum magazine, published by the Canadian Federation of Municipalities and considered to be Canada's national municipal affairs magazine.

The NCAC is focused on responsible pet ownership. It has developed important guidance for its member national associations, dog owners, and provincial and municipal communities regarding national animal identification for pet recovery purposes, dog bite prevention, puppy mills, bylaw controls for municipalities and breed bans.

So what is the NCAC's position? The NCAC takes the position that breed bans are not an effective means of encouraging responsible pet ownership. They do little to address the real issue of concern for municipalities and Ontario citizens, and they can be counterproductive. If enacted as proposed, an Ontario breed ban will also have several negative implications for our member associations, which are working towards responsible pet ownership.

Do breed bans solve the problem? The underlying assumption of breed bans is that the genetics of a specified breed population is the cause of vicious dog attacks and that getting rid of that breed will solve the problem. In fact, there are individuals in every dog breed with the potential to act viciously. Most often, the critical difference lies in how owners manage their animals. Therefore, breed bans cannot resolve the problem. They only serve to deflect the problem away from responsible pet ownership and give a false sense of having done something good.

What actions are needed?

Looking at responsible dog ownership, what is responsible dog ownership? There is broad agreement as to the important elements of responsible dog ownership. These are things that are good for the animals, owners and the community. They include good breeding practices, good nutritional care, good health care, socialization towards people and other animals, municipal licensing, training, exercise, supervision and/or control and spay/neuter for animals not part of a responsible breeding program. Many of these elements require ongoing education, but

are also grounded in common sense, which the NCAC agrees is not easy to legislate.

Controls for vicious dogs: The NCAC agrees with the province that additional controls may be needed for vicious dogs. There is currently insufficient authority for legal action to be taken against known problem dogs and their owners. Existing remedies are not a sufficient deterrent to irresponsible dog owners and there is little requirement for the owner to take responsibility for problems caused by their dog or dogs. Appropriate legislation for dogs that pose a safety menace may include mandatory insurance requirements, spay/neuter requirements tied to licensing, education and training for owners and dogs, improved enforcement, and additional licensing authority.

Why are breed bans problematic?

Who does a breed ban target? A breed ban, unfortunately, will tend to target those owners who are more identifiable because of being responsible breeders and owners. For example, breeds are recognized under the federal Animal Pedigree Act and registered by the Canadian Kennel Club or other breed associations. Breeders who choose to register their animals are much more easily identified than those who do not. Responsible owners are also those who take their animals to the veterinarian for vaccinations and checkups, get them microchipped, get them neutered, train them, socialize them etc. A breed ban could have the unfortunate effect of making these different activities dangerous for any owner of an animal that even remotely resembles the proposed descriptions of a pit bull. Banning specific breeds will result in the inclusion of dogs that are not dangerous, but more importantly, in the exclusion of some dangerous dogs.

Breed-specific legislation will affect a significant number of responsible dog owners, on the sole premise that they have chosen the wrong breed. I think all of us here would agree that we can't afford to alienate one responsible owner.

What are the implications of a breed ban for shelter groups? Animal shelter organizations and pounds play a very important role in municipalities across Ontario. A breed ban will almost certainly lead to additional abandoned animals, which they will be expected to handle. Decisions have to be made whether to put animals up for adoption or to have them euthanized. A ban will result in more dogs having to be euthanized and overall increased pressure on shelter space and resources. Also, shelters will be put into an untenable position, with possible legal implications, in the case of adoptions where there is any doubt or disagreement whether or not an animal might fall into the category of a pit bull.

The implications of a breed ban for the veterinary profession: It is important for the veterinary profession to be trusted by animal owners and counted on to provide veterinary health care to the provinces' pet population. Veterinarians should not be put in a position of having to report those owners whose dogs the provincial government deems inappropriate. This would have a negative

impact on veterinarian-owner relationships and could well influence certain owners not to seek professional health care for their dogs.

The implications for the dog breed registries: The dog breed associations, which are incorporated under the federal Animal Pedigree Act, represent dog breeders who register their animals for breeding purposes. Breed associations such as the Canadian Kennel Club are an important vehicle for working with dog breeders to improve breeding practices and to encourage responsible pet ownership. Unfortunately, the responsible breeders who register their animals will also become prime targets of a breed ban.

In summary, the NCAC applauds the Ontario government's decision to address the issue of dangerous dogs. All of our member associations share in the belief that the answer does not include breed-specific legislation. The NCAC offers its assistance and expertise to the Ontario government in order to ensure that residents of Ontario are given the best legislative tool to help protect them from dangerous dogs and their irresponsible owners. Thank you very much.

The Chair: Thank you, Mr. McCann. We'll have time for one or perhaps two questions. On the government side, Mr. Zimmer.

Mr. Zimmer: Thank you for your presentation. I want to thank you for acknowledging that you and the NCAC did in fact have an opportunity to meet with the Attorney General at his round table and discuss these issues. I think it's important and I thank you for acknowledging that on the record, because there have been suggestions over the course of these hearings that the Attorney General was not available to meet with various groups. So thank you for setting the record straight.

Mr. McCann: You're welcome.

The Chair: Mr. Miller, on the PC side.

Mr. Norm Miller: Thank you for your presentation today. You certainly made a case for why a breed ban does not make sense. I'm just wondering about you expanding on what you think the provincial role should be. I know you said that there was insufficient authority for legal action in the case of dangerous dogs and you've made a bylaw for municipalities. But I'm wondering if you can further expand on what you think the role of the province is in terms of controlling dangerous dogs.

Mr. McCann: Certainly. I think that one of the missing pieces of the puzzle is uniformity. There are a lot of projects through our associations and we have developed a lot of documentation. One of the roles of the provincial government would be to bring this uniformity across the province and to help us deliver a uniform message to municipalities, uniform ways of support for municipalities for shelters and an educational message to the dog-owning population, so that the work that we, the associations, have done is supported at the provincial level.

1430

The Chair: Mr. Kormos, do you have either a question or a comment?

Mr. Kormos: No, thank you, Chair.

The Chair: Mr. Miller, did you have one more question?

Mr. Norm Miller: Yes. I just wondered, as municipalities make their own bylaws and they vary across the province, does the province have a role in ensuring some uniformity in the bylaws that the municipalities pass?

Mr. McCann: My personal experience and the experience of several of my colleagues on the coalition is that one of the reasons that municipalities go ahead and pass different bylaws is that it's very difficult for them to have access to information. That's one of the roles we've attempted to fill through the coalition, by doing this sample bylaw. I'm certain that with the help of the provincial government to provide this information, it would go a long way to bring this uniformity.

The Chair: Thank you very much, Mr. McCann, for participating today and for joining us by teleconference. Thank you very much for your deputation.

MICHAEL ZALESKI

The Chair: Is Mr. Michael Zaleski in the room?

Mr. Michael Zaleski: Mr. Chair, members of the committee, and Mr. Arnott, thank you very much for inviting me to say a few words.

The Chair: You have 10 minutes today. If you choose to use less than 10, we'll divide the time amongst others. Please begin by stating your name clearly for Hansard, and proceed.

Mr. Zaleski: I'm sorry, I don't have any hard copy of my presentation to give away. If your secretary is interested in copying what I have, they are welcome to it.

The Chair: That actually would be fine. When you're done, please provide it to the clerk, who will copy it and distribute it. Just before you begin, please state your name for Hansard.

Mr. Zaleski: I am entirely independent. I don't belong to any association that deals with dogs or any other animals.

The Chair: Just before you start, state your name clearly for Hansard.

Mr. Zaleski: My name is Michael Zaleski.

The Chair: Go ahead.

Mr. Zaleski: My relevant credentials for appearing in front of your committee include a lifelong love of dogs, ownership of many dogs, and, as a parent and a grandparent, a deep-rooted concern for children. Perhaps the most important contribution I can make is through my multi-year residence experience in the four jurisdictions that I consider to be key to your deliberations. Those include Ontario, of course, where I've lived most of my life; the States, specifically Pennsylvania and Tennessee; and the UK and Germany, which I believe are the world's two most animal-loving countries. I have experienced four direct attacks by pit bulls, three in Ontario and one in Tennessee. I have witnessed, live, many professional pit bull fights in Ontario, England and Tennessee.

I really have only one point to make to your committee, or at least attempt to make to your committee, and that is the question of whether the undesirable pit bull behaviour or the behaviour of any dangerous dog is genetically inherited or superimposed by environmental conditions. The main environmental condition, of course, is the owner and the way he handles the animal.

My research, for whatever it's worth, mainly on the Internet and much of it from my lifelong experience, tells me that the breeders' motto at present is typically "there are no bad, vicious pit bulls; there are only irresponsible owners," which is very much along the lines of the gun lobby in the United States: There are no irresponsible guns. Guns don't kill people; people kill people. I don't think that's a responsible statement to make.

If pit bulls are not vicious but the owners are responsible, why was there a horrific case last year in Ontario in which the little victim's grandmother was the dog's owner? There are several other cases of that nature, but this was highly publicized. Why does a pit bull breeder's commercial typically begin with the words "gentle, playful, loving dogs," and this is immediately followed by the caveat, "but not suitable for all owners; children and the elderly should look for other breeds because pit bulls are very strong and can be aggressive"?

On the other side of the fence, opinions, including those of scientists, indicate that pit bulls' behaviour is influenced genetically. They can't help themselves. If we look at other breeds with specialized skills such as sheepdogs or Labs, two of their characteristics are evident to non-experts. They are reasonably proficient at their jobs; for example, a border collie can do his job with sheep at the age of eight months without any human training, and the human training—the environmental part—simply comes in later as an aid to polish up the job behaviour of the animal. They only turn on humans if they try to steal or harm their flocks, and I'm talking about the border collie now, or perhaps a sheepdog equivalent.

The Chair: Mr. Zaleski, you have about three minutes remaining.

Mr. Zaleski: Yes. I'll be done.

Again, genetics are in play but in a beneficial way.

Several dog owners have told me pit bulls that have been neglected or abused are very dangerous. My own experience with most domestic dogs indicates the exact opposite: They would give their lives for the owners, while a pit bull would rather take a life, whether human or canine.

Just to throw out a few numbers, I am told by people who should know that it takes about 30 generations in the life of a species to change its behaviour genetically. If we assume that a dog's generation is worth two years and a human generation is 30-plus, that is quite a long time. I'm not willing to wait 60 years for this to happen, to make pit bulls docile.

My recommendations to you are:

(1) Expand the scope of Bill 132 to include other dangerous dogs—Rottweilers and so on—as is the case in European jurisdictions;

(2) Spell out the restrictions and obligations of commercial dog breeders with respect to dangerous dogs;

(3) Open a registry of both dangerous dogs and their owners; and

(4) Uniquely mark every dangerous dog by permanent means, such as a subcutaneously inserted microchip.

That is the extent of my presentation.

1440

The Chair: Thank you very much. We should have time for one question, and it is the turn of Mr. Kormos.

Mr. Kormos: Thank you, Mr. Zaleski, for coming. The question that's begged is, in what capacity were you involved in or present at these dogfights down south, down in Tennessee, or here in Ontario?

Mr. Zaleski: Yes; once in Ontario and once in England; pit bull fights. Staged pit bull fights in a pit, and with waging on the side.

Mr. Kormos: OK. They weren't raided? You've never been busted at one of these. They were never raided while you were there?

Mr. Zaleski: No. I happened to be working, actually, for the Ontario government as a consultant in Nipigon for quite a while, back about 25 years ago. There was a steady stream of people, mostly from Tennessee, who would bring their hunting dogs along for the purpose of treeing bears, then shooting the bears when they're up in the tree. Actually, they wanted to settle down in Ontario instead of going back home.

The Chair: Mr. Zaleski, please sum up.

Mr. Zaleski: That was the circumstance, and they staged these dog fights, which became quite popular among the local inhabitants.

The Chair: Thank you very much for having come in today.

NARCISA TATU

The Chair: Narcisa Tatu, please. Good afternoon, and welcome. Ms. Tatu, you've got 10 minutes to present to us today. You can use the time in any way you wish. If there's time remaining, we'll divide it among the parties for questions. Please begin by stating your name for Hansard and then proceed.

Ms. Narcisa Tatu: Good afternoon, Mr. Chair and members of the standing committee of the Legislative Assembly. My name is Narcisa Tatu. I would like to thank you for the opportunity to present before you today. I am not a breeder or an expert, by any means. I am here today to relate what my husband and I experienced as dog owners.

We have been in our apartment since 1996, from the first day of our arrival in Ontario. That is more than eight years ago, almost four of which with our CKC-registered Staffordshire bull terrier. In late September 2004, while I was in the lobby, ready for my afternoon walk with my dog, a big, black Labrador almost attacked us. The owner was using all his strength to control it, and I was rushing toward the exit doors, but at that moment the then-on-

duty rental agent emerged from her office and screamed at me, "You should put a muzzle on your pit bull."

I cannot describe what was on my mind and in my heart at that moment. When the lobby was later clear, I came back and asked why nobody helped me, why I had to muzzle my dog, which was not a pit bull, and I mentioned that the incident was taped on the surveillance camera and could be analyzed. The answer I later received from the building management was one of the most astonishing I've ever heard in my life and, in short, was like this: "It doesn't matter that you or your dog could have been bitten. It doesn't matter that your dog is not a pit bull. The public considers all bull terriers vicious, so you have to muzzle your dog."

Please explain to me how come all of a sudden my dog, after three and a half years of exemplary life, becomes so dangerous that it is required to be muzzled and that I, a human being, was at potential risk and that did not matter. The only thing that did matter was that my innocent dog was not muzzled, and that took priority over my safety. I strongly believe that this is a discriminatory reaction, an example of distorted thinking generated by the introduction of a breed-specific legislation component of proposed Bill 132.

The unfortunate ending was on December 1, 2004, when we were served with a notice of eviction and asked to leave in 14 days. I was holding my dog, and the only question that constantly came to my mind was, "What have we done wrong?" The only wrong I found was that she was born looking like something. This is her biggest mistake. This is also the mistake of Darlene Reid's dogs, and for that she needed to be knocked to the ground while she was walking her dogs through the streets of Toronto. Her case was published and televised.

But at the end of the leash is me, the good, innocent dog owner, me the taxpayer and me the voter. My husband and I are highly educated people and good citizens. We are not drug dealers and we are not criminals. I strongly believe that if one minority can be deliberately discriminated against, then others are potentially at risk.

Returning to my eviction case, I am announcing that recently we found out that our landlord corporation decided not to pursue legal action against us. This is no surprise, because we have laws in this country that ensure no case against innocent citizens can be won.

I strongly believe that muzzling my well-behaved, responsibly owned dog is a compromise of my rights as a law-abiding citizen. A muzzled dog cannot participate in shows, obedience, fly ball, agility and therapy work. It will stop any socialization opportunities.

Medical officer of health Dr. David McKeown noted studies from Health Canada and the US Centers for Disease Control and Prevention that show that only 15% of dog bites occur in public places. Therefore, muzzling one breed in public, like Bill 132 requires, will have next to no impact.

I am here today to ask you to remove the breed-specific legislative component from Bill 132 and to model Ontario's legislation similar to Calgary's. As we

all know by now, Calgary reduced its dog bites by 70%. Compared to Winnipeg using the breed-ban approach, it would have to ban 58% of all of its dogs to reduce dog bites by an equal percentage.

I will spare you the long list of reputable organizations that oppose the bill but I will just repeat—and I know you've already heard this over and over again—that responsible ownership is the only important component of any canine safety initiative.

We also have an excellent piece of legislation right in our backyard, and this is Bill 161, proposed by Mrs. Julia Munro. Bill 161 and Calgary's model promote fairness and do not put an unnecessary burden on municipalities.

We've already learned from the city of Mississauga presentation what the costly effects of a breed-specific ban would be. We also learned from Dr. Tim Zaharchuk's OVMA presentation that if Ontario's experience is similar to that of the city of Denver, where a pit bull ban is in place, we might see 4,300 dogs a year euthanized in Toronto alone.

I want to believe that Mr. Delaney and Mr. Peterson, both Mississauga MPPs, spoke with our excellent animal control department. I want to believe that they spoke, as I did, with the very people who will be forced to put to death numerous happy, healthy, totally innocent dogs. I am sure you understand the emotional strain the effects of this bill, as it is written now, will have on these people.

My few recommendations regarding changes to Bill 132 are the following:

First, remove all references to Staffordshire bull terrier, American Staffordshire bull terrier, pit bull or American pit bull terrier. References to specific breeds are highly discriminatory and lead us right away to the identification problem.

We know there is no such breed as a pit bull. We also know, for example, that the Staffordshire bull terrier has been a CKC-registered breed since 1965. They are small dogs of 28 to 38 pounds, very far away from the 150-pound pit bull the Attorney General was referring to in one of his speeches.

The Staffordshire bull terrier is the only breed called the "nanny dog," which shows its extraordinary love for children. This breed has a total lack of aggression toward humans. There is not one—and I repeat, not a single one—recorded case of a purebred, CKC-registered Staffordshire bull terrier making an unprovoked attack on a human being in the history of this country.

The Chair: Just to let you know, you have about three minutes.

Ms. Tatu: May I ask this question: Based on what considerations are you banning this breed? We've already heard from many reputable organizations how difficult, if not impossible, correct and exact breed identification will be, and we have the example of the very recent case that happened in Ottawa on January 21, 2005, where two boys were chased by three dogs originally described as pit bulls that turned out to be bull mastiffs.

1450

Second, establish exactly what constitutes a dangerous dog. The criteria should not be breed-specific, as this only discriminates against certain breeds instead of evaluating individual dogs by their behaviour. We were told time and again by experts that any dog can be dangerous if raised so.

While I am very sorry for all victims of a pit bull attack, I cannot stop thinking that Courtney Trempe was killed by a bull mastiff, that a small boy was killed last year in British Columbia by a border collie and a Rottweiler, that another child was killed by a Pomeranian, that Rottweilers took the life of three-year-old James Waddell. How would a pit bull ban have saved these lives?

Third, put the responsibility on the owners of any type of dog breed—even higher fines and jail times. Personally, I am not aware of any dog attack, regardless of breed, that could not have been prevented by responsible ownership.

Fourth, all dogs should be bought from registered breeders only. Reputable breeders do not sell their dogs to just anyone. I was screened, and the breeder mentioned her requirements before selling me the puppy. Pet stores should not be allowed to sell dogs. Irresponsible backyard breeding should not be tolerated.

Fifth, remove any references to "menacing" dogs. How does this bill in its present form protect me, a responsible dog owner and law-abiding citizen, from the malicious reporting to the authorities of possibly menacing behaviour by my dog?

Sixth, no animal should be sacrificed for research. We have way too powerful scientific methods of research. We do not need to sacrifice innocent dog lives any more. If you consider pit bulls so vicious, how can you be so inconsiderate of the lives and well-being of scientists and lab technicians who will have to work with these animals?

The Chair: Narcisa, you have about one minute remaining.

Ms. Tatu: OK. Seventh: Last but not least, do not put the onus of proving that a dog is not a pit bull on the owner. Under the Charter of Rights, the accused is deemed innocent until proven guilty.

I'd like to close by saying, let's work together, listen to the experts and their solutions and, most important, do not ever attack the core principles that all of us so strongly believe in: fairness, and no discrimination of any type. Thank you.

The Chair: Thank you very much for having come in and for delivering this brief today.

Interruption.

The Chair: Order. Thank you.

Unfortunately, you've used up your time and a little bit of leeway, so there won't be time for questions for you today.

BILL FRANCIS

The Chair: Are Jane Bennion and Bill Francis in the room?

Good afternoon, and welcome. If you've been here for a little while, you get the general order of proceedings. You've got 10 minutes to address us today. Please begin by stating your name clearly for Hansard and then proceed.

Mr. Bill Francis: My name is Bill Francis. This is Jane Bennion. I'd like to thank the committee for the opportunity to speak out against the pit bull ban. I'd also like to thank my friend and client, Jane, of Crimsonridge Kennels. She's a breeder of champion Am Staff terriers, including the number one American Staffordshire terrier in Canada for 2002 and 2003. His name is Pearson. He's also a Canine Good Citizen. He's a great dog and one of my favourites.

Jane has been involved in the breed for about 12 years now, having bred only two litters and a total of nine puppies, which are living throughout Canada. She has also been a dog groomer for 17 years and has never had a problem with a pit bull type, but has had many problems with smaller breeds. Jane already has her house and her grooming shop up for sale. If this ban does go through, she will be moving out of Ontario, like many of my other clients. I'd also like to thank everybody who has been working hard against this ban and would like them to give themselves some applause when my saying is done.

My name is Bill Francis. They also call me Bill Bouvier. I've been involved in purebred breeding since 1977. I am a member of the Canadian Kennel Club, the Dog Legislation Council of Canada, and I have been a breeder of Bouvier des Flandres. I have been schooled in obedience training, guard training, attack training, temperament testing, and grooming, and for the greater part of my adult life I have been a professional dog handler of many breeds, including the dogs that make my bread and butter and are my heart and soul, especially now, the pit bull breeds. I have probably shown more pit bull type of breeds than anybody in Canada, maybe anybody in the United States and maybe anybody in the whole wide world. Yes, you may call me an expert, because you need to listen to the experts.

Right now, if you think the pit bulls are scary, wait till you see what takes over a pit bull: dogs that might come up from Brazil or Argentina that were meant to hunt man, not dogs that were meant to fight each other.

There are a lot of problems with Bill 132. Breed-specific legislation will not do the job of stopping dog bites. To target breeds or mixed breeds that simply look like a pit bull is totally absurd, because any dog can bite in the hands of the wrong owner.

Many of the reported bites that have been classified as being from pit bull types are really mixed breeds, mutts, mongrels, Heinz 57s; they are not purebred. The difference between purebred dogs and mutts is that we know they're purchased from reputable breeders and the purebred dog is going to look and act very much the

same as its ancestors. This is why many responsible breeders offer guarantees against hereditary faults as opposed to hearts, bad hips and bad temperaments. Mixed breeds, mutts, mongrels and Heinz 57s are almost impossible to predict as to the outcome of their personality and temperament because they may have two, three, four or more breeds in their genetics. Compare this to the pit bull or any purebred dog that has had its genes programmed by selective breeding to have a predictable and stable temperament and to become a good social companion—in other words, man's best friend.

The purebred breeds at a dog show are split into seven groups, starting with the sporting, the hounds, the working, the terriers, the toys, the non-sporting and the herding groups. Many of these breeds were bred to do a certain job that was inherited from their ancestors, just like the fellow before was talking about the collie. He was bred to herd sheep for the farmer. The Labrador goes out to retrieve the duck for the hunter. A husky is used to run long distances or to pull a sled. And yes, the pit bull type of dog was bred to fight in the pits against other dogs in the late 1800s. They were bred to fight other dogs, not against man, and if they bit a man, they were culled from the breeding program. They had to be trained to fight. They were baited with small kittens, puppies and different things like that to make them mean and more evil.

Dogfighting was outlawed in the early 1900s, and breeders turned their attention to producing a more docile animal that would make them less of a threat to other dogs and function well as a family pet and companion. Their efforts were rewarded early in the 1900s, with the American Staffordshire terrier being recognized by the American Kennel Club in 1935.

Purebred dogs are not cheap. The cost of buying a purebred dog is around \$1,500-plus. A person can buy a pit-bull-type mixed breed, mutt, mongrel or Heinz 57 from the pound or any shelter for \$50. I'm not picking on the pounds or the shelters, because we all know we need them, now more than ever. But we know—it's a human fault—that we take better care of something that is of more value than something of less value. We all know this is wrong, but again, it stresses that the fault must go back to the human, not the dog.

Dogs of all types require training and guidance. If the human owner does not take enough care to provide such needs, or does not have the knowledge to train their dog properly, then the fault will fall back on the human owner again. Why can we teach dogs to be Canine Good Citizens, yet we have so many people out there who need training on how to be responsible owners?

What's wrong with teaching the children the dos and don'ts of how to play or act with a dog accordingly, maybe by using a Canine Good Citizen dog? Again, what's wrong with schooling or licensing people by taking a brief survey or breed test from the breeders when they buy a dog? We need to make everyone aware that a dog needs a responsible owner, because irresponsible owners will create irresponsible dogs.

1500

The Chair: Mr. Francis, you have about three minutes left.

Mr. Francis: Thank you. Another great concern I have is, what is going to happen to these pit bull types if this bill goes through? In the Toronto area alone, an estimated 80,000 pit bull types reside.

Owners are already feeling the repercussions of this bill. A friend of mine has a boxer-Labrador cross and cannot walk her dog without being mocked or harassed, which has come from the mass hysteria caused by the media and the government. This is a mixed breed with no link to the pit bull bloodlines at all but that falls into the class of "anything that looks like a pit bull." She has become a victim already of the proposed Bill 132. Yes, any dog that looks, eats, walks and combs its hair like a pit bull is a pit bull.

What will happen to these dogs' owners who cannot cope and start to abandon their dogs at the street corners, the pounds, the parks, the storefronts, or brutally leave them in the woods to die alone? Yes, this is very real. God knows that the pounds and shelters are already overrun by pit bulls because of the scare this government has generated through the sensationalism the media has heaped create that pit bulls are the only type of dogs that bite.

Who will be responsible for putting all these pit bull type of dogs down to their death? And what will they do with them? Will they create massive open pits? Or will the Liberals create a new business, the Liberal crematorium or research company? Yes, it has started, in Windsor, when the ban went through. We've already seen dogs abandoned and tied to poles, with a bag of dog food.

Dog bites are awful. It's not a slice but a rip and tear, and most dogs are capable of doing this. We need stiffer laws and stronger policing against irresponsible owners of all breeds and types, not breed-specific ownership. You need to scare the owners about what will happen to them, as far as the law goes, if their dog bites, not take innocent dogs away.

I would be more than happy to assist this government to make any necessary amendments to the Dog Owners' Liability Act or Bill 132, but I will not support the banning of any breed: chihuahuas, German shepherds, cocker spaniels or pit bulls. Breed-specific legislation will not work, and it has been proven not to work. Please listen to the experts and ban the deed, not the breed. Thank you.

The Chair: Thank you very much. That pretty much concludes the time you have, so unfortunately there won't be an opportunity for questions, but thank you very much for having come in and made your presentation to us today.

KARL HAAB

The Chair: Is Mr. Karl Haab in the room? Mr. Haab, please come forward.

Mr. Karl Haab: Good afternoon. Thank you very much for giving me the opportunity to come here.

The Chair: Mr. Haab, if you've been with us for a little while, you understand the general procedure. You've got 10 minutes to address us. If you leave any time, it will be divided among the parties present for questions. Please begin by stating your name clearly for Hansard and then proceed.

Mr. Haab: My name is Karl Haab. I live in Scarborough. I just listened to the previous man's presentation. I wonder how he would respond if he had to carry home a nine-pound poodle with his intestines and everything hanging out because he had been mauled by a pit bull or a bull mastiff. This is exactly what happened to me about six years ago. We had this adorable little poodle, about eight or nine pounds, and I walked the poodle. One nice afternoon, I was walking by my neighbour's house and his bull mastiff came and attacked my dog. He needed 63 stitches because he was chewed up everywhere.

You would think this would have been a lesson to the dog owner, because he or his insurance company paid for the 63 stitches. He then promised to tie the dog up.

One day, a few months later, I walked past the same neighbour's house. The kids had inadvertently left the side door open. The bull mastiff charged out and chewed up my dog. He was dead. There was blood all over the sidewalk, and I had to carry him home with intestines hanging out and explain to my wife and my kids. They were all crying for three days because of this tragic thing.

It wasn't until two or three months later that I found out that the same dog also chewed up another dog in the area when the wife of the owner took the dog for a walk one February in the park. I guess the walkways were a little icy. This dog weighed about 95 pounds; the wife weighed about 110. When the dog pulled on the leash, of course, the dog got loose and chewed up the other dog. The dog didn't die right away, but eventually they had to put it away, because it was just so damaged that it couldn't survive.

I am, of course, against pit bulls and any of these large dogs—bull mastiffs, Rottweilers. We even have in the area a dog owner who has trained his German shepherd to attack anybody who comes near the house. It has been my experience, dealing with a lot of people—I run a business in Scarborough, which I have run for more than 40 years, and I know a lot of people—that while some people are very responsible owners of dogs, responsible ownership is very rare, and therein is the problem. When such a dog owner thinks, "It's really cute if my kids take the dog for a walk," these kids are too small to control the dog. If the dog sees a small dog running around, he's going to tear after it; they can't retain him. So it's very difficult to prevent things like that. How do you legislate against somebody inadvertently leaving the side door open? There are just too many accidents possible, even among responsible owners.

Since I am also involved in a lot of sales, about 30 years ago I read a book about people, how you size up people and their intelligence and their responsibility. These two psychologists say that only 10% of the popu-

lation is intelligent and responsible. They go so far as to say that 55% of the population are morons. Now, if you think about that, how could we possibly have responsible ownership? It's just not possible, because most people will not take the time to learn, to train their kids and make sure that these dogs are properly taken care of every day.

Other than that, I have nothing against these dogs. I have seen some that are wonderful, but I believe they're in the minority. I think your legislation is needed. But you may consider, for those people who already have a dog, a bull mastiff or whatever, and who are very attached to it, letting them keep the dog until it dies a natural death, provided they post a \$5,000 or \$10,000 bond in case they become responsible for an accident, or asking them for a \$5,000 or a \$10,000 licence fee. But I think once these dogs are gone, they should not be allowed anywhere, not only in Ontario.

Thank you very much. If you have any questions, I'll be happy to answer them.

The Chair: Thank you very much for having come in today. From the government side, Mr. Qaadri.

Mr. Shafiq Qaadri (Etobicoke North): Thank you very much for your testimony. There are a number of things that we in the committee are struggling with. A lot of the individuals who have come forward have talked about issues that you've raised, about responsible ownership, about whether it's obedience classes or even protocols on how you negotiate yourself in public. I think you've touched upon some of the difficulties we're struggling with.

I'd like you, if you might, just to expand on this idea: Can we, as a number of these individuals have asked, actually legislate responsible ownership in Ontario or not?

Mr. Haab: I don't believe you can legislate responsible ownership, because people have too many human weaknesses. If you have somebody who is very responsible, if he comes home one Saturday evening and he's all drunk, he'll do anything, while 95% of the time he may be fairly responsible. I don't think you can legislate responsible ownership. If you want these people to keep their dogs until they die a natural death, I think you're going to have to ask for some way to indemnify for damages if something happens. I believe if anybody had to cough up \$5,000 or \$10,000 as a licence fee or to post a bond to guarantee that damages are taken care of, it might help to make them more responsible, because who wants to lose the \$5,000 or \$10,000?

1510

The Chair: Mr. Tascona.

Mr. Tascona: Have you had any experience with the bylaw enforcement in—you're from Toronto?

Mr. Haab: I'm from Scarborough, yes.

Mr. Tascona: So have you had any experience with the bylaw enforcement officers in this community?

Mr. Haab: One day I had to phone, when we had a problem with the dog the second time. They came in and they said, "Something has to be done," and the dog was actually destroyed. But in the meantime, he had chewed

up my dog, which needed 63 stitches, and practically killed the other dog first, before anything really happened.

Mr. Tascona: Did you take any litigation action against the owner of that other dog?

Mr. Haab: No. I was thinking about it, but going to court is a long process and they did offer to pay for a new dog, which cost me \$1,000. They paid for that, and I think they paid for some small burial expenses or whatever.

Mr. Tascona: You mentioned about paying \$5,000 to \$10,000. Other than going to court, what mechanism could you see to ensure that you can get your expenses paid and that you can punish the person properly, if you didn't want to go to court?

Mr. Haab: Anybody who has gone to court before knows that going to court is always a little bit intimidating, because you probably have to hire a lawyer and it will cost you more than you recover. My thought here is, well, OK, so it was a dog and I was very attached to it, but what if it had been a small child? There have been children killed, who are worth a lot more than \$1,000 a child, I'm sure.

Mr. Tascona: There's a different mechanism to protect human life under another act, but that's another issue.

The Chair: At this point, I'd like to say thank you very much for having come in. We've exhausted our time. Thank you for your deputation today.

ADVOCATES FOR THE UNDERDOG

The Chair: Are there representatives here from Advocates for the Underdog?

Good afternoon. If you've been here for a while, you get the general procedure. You've got 15 minutes to address us today. If you leave any time remaining, it will be divided among the parties for questions. Please begin by clearly stating your name, and then proceed.

Ms. Tammy Williams: My name is Tammy Williams. I'd just like to thank you for the opportunity to appear here before you. Natalie Kemeny, my fellow co-founder in Advocates for the Underdog, was supposed to be with me here today to speak, but due to circumstances beyond her control she is unable to attend. I will be reading parts of her speech.

Advocates for the Underdog is an Ontario-based group that promotes responsible animal ownership and opposes breed-specific legislation. Attached in your package is a list of groups that are part of our coalition. Our group formed as a result of a proposed bylaw banning pit-bull-type dogs in the city of Windsor. We originally formed the group to oppose BSL, but as a result of the bylaw, which ultimately passed, we have become a support group for those who are at risk of losing their cherished family pets and a dog rescue to puppies and dogs that will be euthanized based solely on their breed.

Both Natalie and I are volunteers with the Windsor Essex County Humane Society. Ms. Kemeny has been

involved with the shelter for several years and runs their pit bull program, including rescue, temperament testing and follow-up home checking of pit-type dogs. She also does the same for any large-breed dog that enters the shelter.

In Ms. Kemeny's words, "I have seen so many different breeds come in and out of the shelter, ones that the general public would perceive to be great family dogs. Yet it is this animal that is being quarantined for biting a child or another animal. Dogs that have bitten their owners, dogs that have killed other animals—the stories are endless. These dogs come from all different backgrounds, but these are the stories that the media does not report because they are considered great family dogs and these must have been isolated incidents." Dogs that are considered great family pets are in the shelter for quarantine purposes all the time, but the local media, when we call them to advise of a non-pit-bull-type attack, have not reported anything so far.

Another excerpt from Ms. Kemeny's speech: "In early 2004, I received a call from the assistant manager of the Windsor humane society, Lisa Taylor, that a pit-bull-type dog approximately one and a half years of age had arrived and was completely emaciated, weighing only 17 pounds. She was close to death.... Could I rescue this dog? I visited the shelter that very day and could not believe my eyes. She could barely sit because of the bones sticking out of her hindquarters. You could count every vertebra in this dog's spine. Her face was so indented that you could not see any cheeks. Her eyes were sunken. She could not walk without falling down, but her will to live was incredible.

"I immediately brought the dog into my home and offered her unconditional love. Jasmine is now 55 pounds and is [clearly] a Hungarian Vizsla type dog, not a pit bull as originally thought. This error is common but could have ultimately cost the animal its life. You see, in Windsor, if an animal is perceived to be a pit bull, it is euthanized, no questions. It is the law: No new pit bulls; no new pit bull ownership. Many times innocent dogs that are perceived to be pit-bull-type dogs are euthanized because of the uncertainty of their origin, especially mixed breeds and puppies. This is a problem that will be faced provincially should this bill be passed—dog identification."

In January 2004, a local Windsor woman was walking her 18-month-old Labrador retriever named Maddox when a pit-bull-type dog and a Rottweiler-type dog, both of which were off-leash, approached her dog and bit him in the chest. Maddox received stitches, and the owner a \$700 vet bill, as reported in the Windsor Star on January 5, 2004. In July 2004, only six months later, two pit-bull-type dogs got loose from their backyard and attacked and killed a Yorkshire terrier. The owner of these two dogs was the same owner of the original dogs involved in the Labrador retriever attack in January. However, these were now two different dogs, not the same two dogs involved in the first attack.

My question is, how was this careless woman allowed to own two more dogs? Her original dogs had been euthanized for aggression. This woman clearly should not have been allowed to own other dogs. She had already proven to society that she could not raise her dogs to be well-socialized, well-mannered animals and provide safety to the public. Ms. Kemeny visited these two dogs at the shelter, and they were afraid of strangers and not used to being around people. Is the crime that the dogs attacked, or ultimately is the crime that the owner suffered no penalty for her dogs' actions? Had she faced a fine, penalty or some other form of repercussion, would she have been so flippant with regard to her dogs?

The message needs to be sent out and enforced: Owners must be held responsible for their dogs' actions. Had some type of penalty been placed on this woman after the original attack, the second attack by her new dogs could have been prevented. But since nothing happened to her, she just went out and got another pair of dogs and destroyed them with her irresponsibility, along with the poor Yorkie.

At the same time this was going on in Windsor, the Windsor Essex County Humane Society had four other breeds of dogs in quarantine for biting and attacking. The media were contacted, but nothing was reported for the public to be aware of these attacks.

As a result of the media hype in Windsor regarding pit-bull-type dogs, one city councillor asked for hearings to ban these dogs. Expert after expert testified against passing bylaw 245. Information was provided to the city with reasons why it would not work. However, on September 27, 2004, bylaw 245, restricting new ownership of pit-bull-type dogs, was passed. The vote was 6 to 4 in favour of the ban. Councillors indicated that Windsor needed public safety and this would reduce dog bites. They talked about bite statistics. Advocates for the Underdog contacted our local health unit and no stats are available. We have enclosed in our package the response from the health unit indicating that no such data exists and that the cost of compiling such information would be in excess of \$40,000. To date, we still do not know what the city of Windsor based their decision on as they will not speak publicly about it.

1520

Since the passing of the bylaw in Windsor, several dog attacks have occurred and none have been reported because they were not pit-bull-type dogs involved in the attacks. So in order to give Windsor a false sense of security, these attacks have gone unpronounced to the public. Most recently, a non-pit-bull-type dog, causing 33 stitches and a \$400 vet bill, attacked Windsor resident Chris Slote's five-year-old greyhound, Giorgio.

In an October 15 press conference, Attorney General Bryant was asked, "How are you going to deal with the fact that there are going to be people who will simply want to hand over their pit bulls as soon as this legislation comes in?" His response was, "That's the kind of thing that we need to work out with the municipalities between now and the introduction of the bill to address

that possibility. But again, the experience in Winnipeg—and that was sort of the broadest experience, an 11-year experience, I think maybe longer—was that that just didn't happen.”

I am here to disagree. Since bylaw 245 was implemented in Windsor, 84 pit bull type dogs have been impounded at the Windsor/Essex County Humane Society. Another 17 have been surrendered to our group, Advocates for the Underdog. In addition, we receive calls daily from people wanting to dispose of their family pets. People are throwing away their pets. So in response to Mr. Bryant, you are absolutely wrong. It will happen. How do I know it? I'm living it. Pit-bull-type dogs are being left tied to fire hydrants. One was picked up by the humane society on January 5. Farmers are calling Advocates for the Underdog because dogs are being dropped in their fields because people do not want to pay the surrender fee at local shelters. On December 17, 2004, Advocates received a call about a pit-bull-type dog being left in an abandoned home. At the time of the call, the dog had been there for six days without food or water. On January 14, a young girl contacted AFTU to take the four-week-old pup she had found in an alley. The most horrifying story is one of a seven-week-old puppy that was found in a garbage bin left to die, completely emaciated on January 15, 2005. People are disposing of their dogs like garbage.

Since bylaw 245 was passed in Windsor, several citizens have received restricted dog ownership letters, indicating that they must report to licensing or appeal their restrictions. Many citizens being served these restricted letters have never had a bylaw officer at their door nor do they own a pit-bull-type dog. Thirty appeal hearings took place in December and 46 were scheduled for January 2005. That is a total of 76 hearings in a two-month period in a city of 210,000 people. What will happen if a province-wide ban is passed? Who will bear the cost of these appeal hearings?

Another problem facing responsible owners is the simple task of walking one's dog. It has become, to say the very least, scary. Citizens walking down the streets have begun to fling verbal abuse at innocent dog owners for no other reason than the breed they are walking. In a much-publicized Toronto incident, a lady was walking her two pit-bull-type dogs in September 2004 when two males approached her. They kicked her one dog and burned her other dog with a cigarette. Both dogs submitted to the ground and did not react to the cruelty that was displayed to them. This is unacceptable, but inevitable should this bill pass.

In the words of Natalie Kemeny, “Prior to the Windsor ban, I would take my dog Rocco with me everywhere. People would always ask if they could pet him and commented on how well behaved he was. Due to the safety issues for my loved companion and myself, I no longer take him for walks in Windsor. Some neighbours who once asked Rocco to play with their family pets no longer speak to me because they are frightened of him.”

The aforementioned stories bring to light an even greater social question. If the government declares these dogs inherently dangerous, what does that say about the people who own them? I think we can all agree that responsible owners will retain ownership of their dogs and comply with any legislation. But what kind of personal pains will befall these people? Will friends become enemies? Will people be ostracized due to their choice of dog? Will children not be allowed to play at school friends' homes with these types of dogs? The questions are endless. Has it truly been analyzed how Bill 132 will affect dog owners, dogs, families, friends, relationships and loved ones? I think the answer is no.

You have heard throughout the hearings over the past two weeks that breed-specific legislation is not a solution to reduce dog bites. Education in our province and updated laws for dangerous dogs that do not target one specific breed have been needed for a very long time.

The Chair: Tammy, you've got about three minutes remaining.

Ms. Williams: OK. Bill 132 is not the solution and will only kill thousands of innocent dogs. I have worked out the numbers, based on Windsor trends after our city banned pit bulls. If this trend continues at the provincial level, we are in for the euthanization of many dogs. Eighty-four dogs have been euthanized in Windsor, and 39 dogs have been rescued from euthanization by Advocates for the Underdog. The total of euthanized and would-be euthanized dogs is 123. This is all in a 90-day period. If you apply this number to the population of Ontario, it is estimated that 7,286 dogs will be euthanized within the first three months, if Bill 132 is passed—7,286 dogs.

There is no doubt that dog attacks are tragic, and we definitely do not want to detract from that. But let's focus on attacks by all breeds, not just one. Any dog can attack or bite, and any dog that attacks should be deemed a danger to society.

Due to the breed-specific nature of Bill 132, it will not prevent the majority of dog bites. Bill 132 would not have prevented the following attacks:

The 4-year-old child in Lakeshore, Ontario, who was attacked in July 2004 by a dog for disturbing him while he was eating. The child's bottom lip was nearly severed from his face. This was not a pit bull;

A 6-year-old girl named Mackenzie in Windsor, Ontario, who was attacked by her own non-pit-bull-type dog for walking too close to his food dish. The child had to have her face reconstructed by surgeon Dr. Adams;

Cody, the toddler in Maple Ridge, British Columbia, who was mauled to death by four dogs in his parents' home—all non-pit-bull-type dogs;

James Waddell, 4 years of age, of Saint John, New Brunswick, who was mauled to death in his own backyard in November 2003 by three non-pit-bull-type dogs;

Ricardo, a 12-year-old paperboy in Cambridge, who was mauled on November 16, 2004, by what was originally reported as a pit bull. After an investigation by

the Cambridge humane society, the dog was determined to be a mutt—a non-pit-bull-type dog;

Cameron Buckett, a 14-day-old baby who was brutally mauled. It took doctors six hours to save this child's life. He was attacked by two non-pit-bull-type dogs;

Courtney Trempe, age 8, who was attacked and killed by a non-pit-bull-type dog;

The two brothers in Ottawa who were attacked in January 2005 by non-pit-bull-type dogs.

The Chair: That's basically your time for today. Thank you for having come in to make your presentation.
Applause.

The Chair: Order.

1530

ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

The Chair: Our next presentation is the Royal Society for the Prevention of Cruelty to Animals, who are joining us by teleconference from the UK. Are you on the line?

Mr. Michael Flower: Yes, I am.

The Chair: Good evening to you. I'm Bob Delaney, Chair of the standing committee on the Legislative Assembly in the province of Ontario. You're speaking to us here at Queen's Park in Toronto, in the Legislative Building. Present in this room are representatives of the parties in the Ontario Legislature. This afternoon, you've got 15 minutes to present to us. If there's any time remaining, we'll divide it among the parties for questions. Please begin by stating your name for Hansard, and then proceed.

Mr. Flower: My name is Michael Flower. I'm a chief superintendent with the RSPCA. I work in the RSPCA's prosecutions department. I am grateful to you for the opportunity to make a brief statement in relation to this issue.

First, may I just advise you that the primary function of the RSPCA in this country is to promote kindness to animals and to prevent and suppress cruelty to animals. We are not primarily involved with the control of dangerous dogs or with dog control issues, but our work in the welfare field has given our staff a lot of contact with dangerous dogs and pit bull terriers and we do feel qualified to talk about certain aspects of the law in this country as it relates to dangerous dogs.

You may be aware that pit bull terriers were introduced into this country in the mid-1970s. The RSPCA became concerned about this breed of dog because we discovered that the breed was being used in dogfighting, we were finding lots of neglected animals, and there was also concern about pit bull terriers attacking other animals and indeed people. It was the latter occurrence that caused the government here to introduce the Dangerous Dogs Act in 1991.

The RSPCA's concern with this legislation is that it does contain elements that are breed-specific, insofar as the legislation prohibits the possession of pit bull terriers except under certain circumstances. The legislation itself

was really designed to eradicate the pit bull terrier from this country, but I can advise you that after 14 years or so the legislation hasn't worked.

We have been able to identify particular problems with our legislation which I wanted to draw to your attention. In particular, when the law was introduced we found that large numbers of pit bull terrier owners effectively ignored it. There was a requirement of owners to either destroy their dogs or to register them. Many people ignored it just with the view of being bloody-minded and awkward, but there were many people who owned pit-bull-terrier-type dogs who genuinely believed they weren't pit bull terriers.

Therein lies the essence of the problem. It is extremely difficult to identify a dog as being a pit bull terrier. There is no recognized breed standard in this country. It's not a breed that is recognized by our kennel club, and we've been forced to rely on a breed standard that was produced by the American Dog Breeders Association, which, as you may know, is an organization that has involvement with the dogfighting fraternity.

The fact that the legislation is breed-specific has made it extremely difficult for us or for anyone else to enforce the legislation. In any case that the RSPCA has been involved with, the identification of a suspect animal has been a major concern and a major deficiency in the legislation. We're aware of cases where no less than four experts have been called to court to try to identify a dog; this could be two experts for the prosecution and two experts for the defence. This causes a tremendous amount of confusion and a lack of clarity in the legislation. It can mean that it's difficult for a prosecutor to secure convictions, because reasonable doubt is always raised.

And there are other implications of the way the legislation is formed; in particular, costs. Seized animals in this country can be retained for months, and possibly years, pending determination of proceedings. The boarding fees for keeping such animals can be approximately £10 a day. A tremendous amount of court time is wasted, and of course there are welfare implications for these seized animals.

Therefore, we conclude from that that any legislation that contains elements of being breed-specific is likely to be very, very difficult to enforce and is not going to make good law.

The other problem we have in this country is that breed-specific legislation in itself does not necessarily address the problem with dangerous dogs. Although we had a number of very serious attacks by pit bull terriers upon people in this country, there are also very serious attacks by many other breeds of dogs. Although I haven't got all the statistics in front of me, the last I saw indicated that attacks by pit bull terriers were well down on the list.

There are other alternatives to breed-specific legislation. The RSPCA would recognize that there is a need to have legislation that controls dogs. The public has a right to be protected, but the legislation needs to be fair for all members of society, including dog owners. We believe that the way forward is to have strong legislation

that controls dogs. The courts need to have the power to order specific control measures, such as muzzling and keeping on a lead in public. There should be a power to order the neutering of dangerous dogs, because that tends to make them less dangerous. Other provisions can be introduced relating to compulsory training and insurance. There should also be a facility for courts to order the destruction of dogs which are deemed to be extremely dangerous.

We also believe that rather than just penalizing the dog, regard ought to be had for the behaviour of the dog's owner, because in our view, the vast majority of problems created by dogs are a result of irresponsible ownership. Therefore, if a person is irresponsible and has possession of a dangerous dog, the courts should have the power not only to order the confiscation of the animal but also to order the disqualification of an owner from having custody of dogs in future. Punitive measures can also be built in to provide a deterrence effect to try and encourage owners to be responsible, to keep dogs under proper control and therefore prevent dogs from being dangerous to the public.

To summarize what I've said, we believe there is a need to have legislation that controls dogs. We do not believe the legislation should be breed-specific. We believe the legislation should deal with the deed that's been committed by the animal rather than the breed. Our own experience is that breed-specific legislation is very complicated, it doesn't make good law, and we would strongly recommend that thought be given to introducing legislation that has no elements of breed-specificity in it.

The Chair: Thank you very much, Mr. Flower. We do have some time for questions. Mr. Miller of the Progressive Conservative Party will be addressing you.

Mr. Norm Miller: Thank you, Mr. Flower, for taking the time to address us. Your country has had 14 years' experience with the breed-specific ban. I'm just wondering, did the Ontario government consult with you about that experience?

Mr. Flower: Not that I'm aware of.

Mr. Norm Miller: OK. Part of the question about this legislation is what a pit bull is. In the definition of "pit bull" in the breed ban you have in place, did you include the Staffordshire bull terrier?

Mr. Flower: No, we did not. In fact, the legislation in this country contains no definition of "pit bull terrier" at all. Our legislation simply said it was designed to prohibit persons from having the custody of types of dogs bred for fighting, and it specifically referred to any dog of the type known as the pit bull terrier. There was no further definition or clarification, but clearly, and quite correctly, there was no intention to include Staffordshire bull terriers in this legislation.

Mr. Norm Miller: So in England, the Staffordshire bull terrier is not considered a pit bull?

Mr. Flower: No, it's not.

Mr. Norm Miller: Did you support the dangerous dog legislation in 1991, when it came into effect?

1540

Mr. Flower: The RSPCA supported the principle of controlling dogs, but the legislation here was very hastily implemented. Initially, the government here proposed that all pit bull terriers should just be killed. We fought against that proposal, and the resultant legislation was something of a compromise on our government's part. It never went as far as authorizing or ordering the immediate destruction of dogs. It became designed to phase the breed out. But the RSPCA always expressed concern about the legislation because of the breed-specific nature of it and the perceived difficulties in proving whether a dog was a pit bull terrier or some sort of crossbreed with another animal.

The Chair: Thank you, Mr. Flower. Mr. Zimmer, from the governing Liberal Party, is addressing you.

Mr. Zimmer: Who is Andy Foxcroft?

Mr. Flower: He is the chief officer of our inspectorate. He is actually sitting in this room with me.

Mr. Zimmer: Because I have on this issue that the Attorney General did not consult with the society; in fact, I have before me various e-mail correspondence on the issue with Mr. Andy Foxcroft.

Mr. Flower: Would you like Mr. Foxcroft to respond to your question?

Mr. Zimmer: Yes.

Mr. Flower: Bear with me; I'll pass the telephone over.

Mr. Andy Foxcroft: Hello there. This is Andy Foxcroft.

Mr. Zimmer: Mr. Foxcroft, I have before me electronic correspondence between you and one Abi Lewis, a lawyer in the Attorney General's office.

Mr. Foxcroft: Yes, that's correct.

Mr. Zimmer: And does that e-mail correspondence deal with the things we've been talking about on this telephone conference call?

Mr. Foxcroft: It does, yes, I mean, if you have the—

Mr. Zimmer: All right. Thank you.

The Chair: Mr. Flower and Mr. Foxcroft, thank you very much for your deputation this afternoon and for taking the time to spend your time with us via conference call. We wish you a good evening.

PATRICIA BEAR CLAW

The Chair: Is Patricia Bear Claw in the room?

Ms. Bear Claw, you have 10 minutes to address us today.

Ms. Patricia Bear Claw: I won't take that long. I'm here because nine other people at my co-op wanted to come but had to work, and I wasn't working this afternoon.

The Chair: Would you, then, start by stating your name for Hansard and just proceed. Any time remaining we'll divide among the parties for questions.

Ms. Bear Claw: Patricia Bear Claw. Honourable members, I am going to talk about the first time ever I

saw a pit bull, a few experiences and thoughts about pit bulls, and then I'll tie it up. It's very short.

The first time I saw a pit bull was when I was walking home from work along Kennedy Road. A small, cute dog, unleashed, was walking ahead of me with two women. Suddenly the dog just ran over to a large tree growing by the sidewalk and jumped up high and caught a branch in his mouth. He wiggled around until the limb broke—oh, I'm really nervous—and he fell down again with the limb, and then he jumped up again and caught another limb. I'd never seen a dog aggressively attack a tree like that, and I couldn't understand why he did it. It didn't make sense. But I became concerned about my safety and crossed over to the other side of the street and hurried home.

The next day, on my way to work, I was surprised to see all the lower branches of the tree broken off and lying on the ground. It was a real scene of destruction. Later, I went to the library and learned that it was a pit bull; at least the book said it was a pit bull. Still, I thought, "That's just one dog, and I don't have to think that all pit bulls would act like that." But over the years, I've found out that most of them act quite aggressively.

Some time later, I was billeted at a home in Saskatchewan where there was a pit bull. The dog was locked up in the kitchen at night because he had bitten his owner. He had also flung himself against the glass doors of a bookcase in the living room until the glass shattered. The children in the house were afraid of him, and so was I. I didn't get up until everybody else was up. He didn't seem to behave by how he was treated, but had moods of aggression for no reason. We all were very careful not to make him get into a nasty mood.

Over the last year few years, pit bull attacks have been in newspaper headlines quite often. A few stay in my mind. There was a man who was caring for two pit bulls for a friend. He was out walking them when they viciously attacked him. The police, who mortally shot the dogs, said that when the one dog was dying he was still trying to continue the attack on the injured man. Another breed would not have done that. Pit bulls continue attacking people even when they are hit with shovels to make them stop their attack. That's why pit bulls, I think, are so dangerous. They just keep going and going.

Bill 132 is urgently needed. It won't solve all the problems with dogs, because other dogs can be vicious too. Pit bulls were bred to fight and attack. They do not give up or even obey orders to stop attacking. They're bred to fight to the death in dogfights. They may look docile, but they're a walking time bomb. They are, like the Attorney General said, a loaded machine gun. People deserve the right to be safe. A pit bull attack must be the most frightening experience that anyone can go through. In a civilized country people's rights come before a dog's rights. But pit bulls have attacked dogs as well.

I agree with people having to serve six months in jail and having owners fined as much as \$10,000 for dogs that bite, and not just pit bulls but other dogs as well. I'd like to see a longer jail term and a ban on ever owning a

dog again. The person who has the vicious dog should have one chance, and then he can't own a dog again, because he shouldn't be owning a dog. Owning a dog is a privilege, not a right.

I have talked about the first time I ever saw a pit bull, and it was acting in a very strange, destructive way. I have talked about being billeted in a home in Saskatchewan, where a pit bull had moods of aggression no matter how he was treated. Then I went on to describe several articles about pit bulls in the media that really frightened me.

I urge that Bill 132 be put into law and that jail sentences for owners of vicious pit bulls that bite, or any dog that bites, be increased. I hope the passing of this bill will make it safer for people and animals, but most of all for children. Let's pass Bill 132 and ban all future pit bulls from Ontario.

At the back, I have a copy of the names of the people who wanted to be here but couldn't. I think too that responsible ownership has to apply to all dogs. If you're not a responsible owner, you shouldn't have the right to own a dog.

The Chair: Thank you for coming in today. We do have some time for questions if you'd like to stay for a few minutes. Mr. Milloy.

Mr. John Milloy (Kitchener Centre): Thank you, Mr. Chairman. I also want to thank our witness today for coming in. I just wanted to ask you about the photocopy on the final page, the other people who support your presentation.

Ms. Bear Claw: They wanted to be here but they couldn't.

Mr. Milloy: They all are neighbours? I just wondered if they too had experiences or had witnessed things that they wanted to bring forward that you might want to share.

Ms. Bear Claw: They live in the co-op where I live. They just said, "We don't want pit bulls here." We've had a few problems around the area. I've never been bitten by a dog. I had dogs when my kids were little. But they just said they didn't want pit bulls around. They were frightened when they saw—and we don't know what a pit bull is.

Mr. Milloy: Did you have a meeting, or the group got together?

Ms. Bear Claw: Yes.

1550

The Chair: Mr. Miller.

Mr. Miller: Thank you for coming before the committee today. I don't know whether you were here just before to hear the presenter from England, but they were just talking about their 14 years of experience with the breed-specific ban. You said something I found interesting, that your group doesn't know what a pit bull is. Is that correct? Did I hear you correctly?

Ms. Bear Claw: Well, we see them, but we don't really know—nobody knows—what a pit bull is, I don't think. But we do know they have a very aggressive—

Mr. Miller: I think that's part of the problem with this legislation. I think you'd probably agree that we all want to deal with dangerous dogs and we want to see less of them. We want to be able to walk around and feel safe. I think it's also true that the media contribute to people being nervous about pit bulls with reports—the media like to sensationalize things too, I think it's safe to say.

But part of the problem with this legislation is what a pit bull is, because it isn't a specific breed of dog. I guess my question is, don't you think we should be dealing with all dangerous dogs versus just pit bulls?

Ms. Bear Claw: Of course. That's got to be the next step, that you stop dangerous dogs from running around too. My daughter was carrying my little grandson on a little shoulder thing and a dog—I think it was probably part German shepherd—came and ran and grabbed his sock off his foot. He could have easily bit his foot. The scary thing was the dog owner took three or four minutes to try and get his dog in line and get that sock back from him. He was so apologetic, but I thought there's got to be something wrong when you have a dog running at large and you don't have any control over him.

Mr. Miller: I think your point is well taken. The passage of this bill could actually give people a false sense of security if they think all dangerous dogs are dealt with, when in fact pit bulls are a relatively small part of the actual dog-bite problem.

Ms. Bear Claw: Yes, but they're the ones that hang on and do more damage once they attack.

Mr. Miller: That's certainly what the media have been saying. I'm not sure whether that's true or not, but they've been saying that.

The Chair: Thank you very much for having come in to share your experiences today.

HAPPY DOG COMMUNICATIONS

The Chair: Is Happy Dog Communications present?
Good afternoon.

Ms. Sarah Dann: Hi there. My name is Sarah Dann.

The Chair: OK, Sarah, you've got 15 minutes to present to us. If you use less than that time, we'll divide the balance between the party's represented and have them ask you some questions. Now that you've identified yourself for Hansard, please proceed.

Ms. Dann: As I've said, my name is Sarah Dann. I will present to you my presentation after I've spoken. As with everything in this proposed pit bull ban, even my speech has been evolving, even today. This has been a fast-moving—I'll read.

I realize you have digested a good deal of information over the past four days of hearings. I too have been chewing on Bill 132 since I heard about the proposed pit bull ban. So far, this drastic legislation has left a bad taste in my mouth. I hope this 15 minutes will assist in making Bill 132 more palatable to pit bull owners across Ontario.

My business is called Happy Dog Communications. I named it nearly 10 years ago out of recognition that my dog spawned more conversation than any other aspect of

my life. My dog at the time was an English bull terrier. For each e-mail Michael Bryant has received, I have had a conversation about my dogs. As you have discovered over the past few months, nothing ignites conversation like bull terrier breeds.

Since the day the proposed ban was announced, I have communicated with hundreds of people who are petrified, concerned and desperate in their opposition to the proposed pit bull ban. I have studied the actions of various organizations, many of whom have presented to you over the past four days, and I have attempted to connect the dots and build a community for the proud and responsible pit bull owners of Ontario.

Unlike yourselves, who are able to draw on extensive government resources, pit bull owners were left scrambling to find one another after the Liberal government dropped the pit-bull-ban bomb. Our community continues to gather strength and, like you, has become much better informed and organized. We stand united against the pit bull ban and see this potential ban as a violation not only of our dogs but of our rights as Ontario citizens.

I will mostly stay away from statistics, since I know as a journalism graduate that there are many ways to slice them, and our Attorney General continues to demonstrate that they can be used to fulfill political agendas rather than to represent balance and truth. However, it is critical to the discussion of the pit bull ban to note that only a very small minority of the "breed" do bite. The best estimates are that there are at least 12,000 pit bulls—I've heard 8,000 today—in the GTA alone. Bite statistics seem to come in at around 50 bites per year for the breed, a similar number to that consistently noted for golden Labs, golden retrievers, German shepherds, cocker spaniels and some other breeds as well. Even allowing for a large margin of error, pit bulls that bite compose significantly less than 1% of the pit bull population. That leaves 99% of us with good dogs that do no harm. The Liberal government is basing the proposed pit bull ban on a very small minority and is not supported by experts in doing so. This point needs to be projected.

It is on behalf of the vast majority of pit bull owners of Ontario that I speak to you today. Not all of us have had the opportunity to present, and I thank you for having me here. I have spoken with people who are desperate to be heard on this bill, the reason being that we own dogs that are good dogs. We are not individuals who put our dogs in pits to kill one another. We put our dogs in parks to play with one another. Our dogs are good neighbours and good citizens. We do not train our dogs to attack anyone in a uniform. We teach them not to bark at their neighbours. We do not abuse our dogs, nor do we let them abuse others, human or canine. We love our dogs and we do consider them family. For us, this is an emotional issue and I understand that most of the presentations you've heard keep emotion out of this. But you need to understand that, as representatives of Ontario citizens, we consider these dogs family—hairly kids, if you will.

Much has been made of responsibility over the past few months, and for good reason. The argument goes that

dog owners must assume responsibility for our pets. We are, after all, the people who put their collars and leashes on, we're the ones who walk them in public or contain them on our property. We are the ones who pay the price if they do damage or cause pain. We will also be the ones who will have to muzzle and leash them should Bill 132 pass as written. And this is the root of the current uproar.

Pit bull owners know that our dogs are inherently dogs, not inherently dangerous. Many of us own dogs once abandoned by those who hoped they were dangerous, even believed that they were dangerous and were disappointed to discover that, alas, they were not dangerous. Many of us have picked up where irresponsible owners left off.

Muzzling our good pit bulls will make us accomplices in spreading unfounded fear about our breed. The only thing we see as inherently dangerous is the government's denial of our rights and of the truth, which is that the majority of pit bulls are not a threat to the public. We fear an Ontario in which the government supports and even solicits prejudice, and we are fighting what we feel is unfair and unfounded discrimination by our own government.

Even with the threat of the pit bull ban, pit bull owners have seen the results of such discrimination and we fear for our own security should the ban pass. In one park in Toronto, bullets with a hateful message were found. Tammy from Advocates for the Underdog just reported the well-known incident of a woman who was herself attacked as she walked her two pit bulls. I have met her and her dogs. Her dogs are what has become known as "bullet proof" in terms of the safety and the way they present themselves in society as good citizens. The pit bull ban and muzzle law will brand thousands of pit bull owners as second-class citizens. We will be deemed guilty by association.

The Canadian Charter of Rights says that it is the responsibility of government to represent and protect the rights of all citizens equally. People who own pit bulls are citizens of Ontario too. We pay our taxes, talk to our neighbours and play in our parks just like the owners of Labs and dachshunds and mutts. The Attorney General of Ontario is mandated to protect public safety, and we insist on being protected. Ontario parks are currently a typically peaceful and police-free environment. Dog owners share equally in keeping the peace and ensuring their dogs do the same. As with most situations where citizens interact with one another, it is shared responsibility and equal rights that protect the public safety.

Canadian law is based on the assumption that all Canadian citizens are innocent until proven guilty. When I am told by the government of Ontario to muzzle my dog based on breed, the assumption is that my innocent dog is guilty. The experts do not support this assumption, nor do the vast majority of pit bull owners of Ontario, nor do I. Not only do I not support it, but I feel it is irresponsible and sets a dangerous precedent. I did not vote for a government that endorses prejudice.

1600

Michael Bryant will be asking me to support this legislation by placing a muzzle on my dog. I suggest something completely different.

For 27 years, I have walked the Beaches boardwalk with a terrier by my side. I started out with cairn terriers, which are now known as "Toto dogs." I moved on to English bull terriers, widely known as "Don Cherry dogs." I switched recently to pit bull terriers. Never has a dog been more in need of a public relations campaign. The definition given to this breed varies from "dangerous killer" to "lovable pet."

As you have witnessed, the divide between the public's "understanding" of pit bulls and that of dog experts and owners could not be much further apart. I would like to speak to you about how that communication gap could be bridged and why I see it as our joint responsibility, government and pit bull owners, to bridge it. We need to combat bad media coverage, not base legislation on it.

We just heard from Ms. Bear Claw about her fear of pit bulls, which from everything you've heard over the last four days is a perfect example of the sort of perception that the average citizen of Ontario is walking around with. I think it's unfair to the average citizen of Ontario to let them believe that pit bulls are as dangerous as they think they are. The pit bull needs a rebranding, essentially.

We had Michael Bryant up here today talking about the fact that people think there's a problem there. Yes, people do think there's a problem there. All we hear about is the problem. All we hear about in the media are the pit bull attacks. If you base this legislation on that media coverage, you're basing your legislation on the criminal element and the approximately 1% of the population—maybe it's as high as 5%—that they represent. You are not representing me. You are not representing the thousands and thousands of other pit bull owners who vote and who have put a lot of effort into making sure their dogs are good citizens. Where is the humanity in that?

I have an expectation that my government will base law on fact, not fear. I have an expectation that my government will spread fact, not fear. I have a huge problem with being asked to be complicit in what essentially adds up to a very bad publicity campaign for the pit bull breed, which is muzzling them in public. All you're doing at that point is adding to the perception that the pit bull is a dangerous dog.

Mr. Kormos made a funny comment that we could put pink bows as a deterrent on pit bulls. It's not such a bad idea. Every Halloween I dress my dogs up. When the kids come to the door, they are greeted by English bull terriers or pit bull terriers with lipstick kisses on them one year—

The Chair: Sarah, you have about three minutes remaining.

Ms. Dann: Thank you—or dressed up as the Mole Sisters, some popular kids' book characters, another year.

It is possible to project the pit bull terrier positively. I believe this is the only solution that will actually bring a level of responsibility and humanity to this entire debate.

I have heard swiftness praised over the last few days. I have heard Michael Bryant commend himself for the representation he's given to various groups. Representation is fantastic; we appreciate it. However, listening is more important. The experts have unanimously come out and said no to a breed-specific ban. This is Canada. This is a democracy. This is a country known for good government. I'm sorry, but not basing legislation on experts and basing it on the politics enjoyed by individuals, such as the Honourable Michael Bryant, is unfair to the average voter.

I would like to suggest that we work together to educate so that people understand that it is not just pit bulls that pose a risk, but also German shepherds, cocker spaniels, all breeds of dogs.

We have heard from various people that one hour of education for children can bring dog bites down 1%. We have heard incessantly about 5,000—now 6,000—e-mails received by Michael Bryant on this issue. I worked on marketing campaigns that received 5,000 e-mails a day. It's lovely to solicit that kind of response, but 5,000 e-mails does not a democracy make. Many of the people here have e-mailed against the pit bull ban. My reason for tying those two things together is that we could be educating the public. Instead of having a politician standing up there and promoting fear and muzzling our dogs, we could be teaching people how to avoid dog bites with all breeds of dogs, which would support the findings or the suggestions of 9,200 vets in Canada. I've worked in a veterinary office. Those people see all breeds of dogs. They see good owners and bad owners.

We have to believe that responsible owners and responsible ownership can address this problem. We cannot contribute to the criminal element their idea of the pit bull as a status symbol. Let's get our dogs out in the community, keep them off their leashes, keep them in the parks, muzzle the bad dogs, just like you would every other breed, and allow dangerous-dog legislation to do its job. Allow us to do our job as responsible dog owners and stop the fear. Base it on fact.

The Chair: Thank you. That concludes—

Applause.

The Chair: Ladies and gentlemen, I have stated in the past that it is not the practice in the Legislative Assembly to recognize deputations. If necessary, I will clear the room.

Thank you very much, Sarah.

STAFFORDSHIRE BULL TERRIER CLUB OF CANADA

The Chair: Is there a representative present from Staffordshire Arms?

If you've got some material to pass out, the clerk will take it from you and distribute it to the committee. Thank you.

Ms. Squibs Mercier: I'm Squibs Mercier. Ladies and gentlemen, I appreciate this chance to come and speak to you and I'm here mainly to defend the honour and the character of Staffordshire bull terriers.

The Chair: As you start, just to let you know you've got 15 minutes to address us. If there's time remaining after you've finished, we'll divide the time among the parties for questions. Now that you've identified yourself for Hansard, please proceed.

Ms. Mercier: Thank you. Ladies and gentlemen, I appreciate this opportunity to express my concern and offer my suggestions. I strongly oppose breed-specific legislation. Bill 132 does not deal with the problem or improve public safety.

I'm Squibs Mercier, the remaining founder of the Staffordshire Bull Terrier Club of Canada. I would like to submit the club's official response to the media's evidence regarding the Staffordshire bull terrier presented to the president of the club on January 24. I'm also the honorary life vice-president of the Staffordshire Bull Terrier Club of Canada, a life member of the Canadian Kennel Club, a life member of the Ottawa Kennel Club, director of the Rideau Terrier Club and, for the past 40 years, historian and archivist of the Staffordshire Bull Terrier Club of Canada.

Dogs are my interest and Staffordshire bull terriers are my life. My dedication to the breed is a lifetime commitment. They will always be an essential part of my family. Staffordshire bull terriers were part of my family even before 1935, when they were registered with the Kennel Club in England. My father recognized their trustworthy characteristics as valued members of the family and as an all-purpose, loyal companion. Their affection, especially toward children, had dubbed them the "nanny dog."

1610

The distinguished Royal Staffordshire regiment in England has always had a Staffordshire bull terrier as its honorary mascot. Our club is privileged to share the same motto as this respected regiment. It is evident that the regiment would not have selected a Staffordshire bull terrier if the breed's attributes did not exemplify every principle of the highest esteem that the regiment represented: intelligence, obedience, trustworthiness and devotion to kinfolk. The Staffordshire bull terrier mascot is called Watchman III and is presented to the Queen and other dignitaries whenever the regiment is on parade. This is, again, another positive distinction bestowed upon our breed and is beyond reproach.

The Staffordshire motto, "Nemo me impune Lacessit," is an inspiration and guidepost for dealing with life's unpredictable challenges. My father taught me to acknowledge this motto as a youngster, as I did likewise with my own children.

The Staffordshire bull terrier is my father's legacy to me. I have cherished this gift and hope to pass it on to others.

The motto means that one must not harm or discredit others, but never accept slander to body or character

without being ready to stand tall and correct the issue. That is why I am standing tall before you today, ready to defend the honour and reputation of our Staffordshire bull terriers and their responsible owners.

The Canadian Kennel Club champion shows often have an entry of 1,200 dogs of various pure breeds. With the public milling around in a limited area, good behaviour is evident throughout the show. This indicates responsible dog owners and breeders.

I am proud to report that for the past 23 years, Staffordshire bull terriers have been an active member of the Ottawa Junior Kennel Club, competing in all junior handling shows and entertaining in fun dress-up events. However, the most rewarding and encouraging aspect was the community services they offered. The juniors and their Stafford companions visited the local retirement homes, selected hospital wards and the veterans' residence to offer hands-on therapy. This harmonious service was always well attended and well received and, naturally, in great demand, as it brought pleasure to all involved. This is remarkable bonding between the juniors and the dogs. The Staffords instinctively remain calm, without a display of jumping, to greet the seniors. It is a worthwhile kindness given from the hearts of the youth of Canada and their dependable four-footed companions. This should be recognized and highly commended in today's society.

Might I also bring to your attention that our breed club represents Staffordshire bull terriers over the largest terrain in the world, from coast to coast. Our club, which has been recognized by the Canadian Kennel Club for 40 years in good standing, acts as one voice to promote our lovable Staffords, which have done us proud, without one complaint against their temperament or behaviour. Surely this is a remarkable record that speaks well for itself and should not be ignored or misrepresented.

The club operates a rescue service that responds to all inquiries from the humane society shelters, but just as in the media reports, a breed is often misidentified. In most cases, the dog in the shelter is not a Staffordshire bull terrier. No Stafford is left in despair. When circumstances arise, we ensure that good homes and good owners are provided.

Therefore, it is essential not to ban registered breeds and cripple the CKC establishment, which promotes education and health benefits, encourages dog obedience and provides handling classes to new puppy owners. This is where responsible dog owners are created.

The recent dog attacks are our concern, and attention needs to be directed to the irresponsible owners. It is essential to look at both ends of the lead. The loop end is accountable for the damage caused. Just like in a car accident, the make of the automobile is not to blame, it is the owner or driver, so it should be that if you own a dog, regardless of breed, you are liable for any damages.

The mentality of people who choose to own an aggressive animal is that they have lost respect for humanity, and we can query their motives. The authorities can extend education and make owners aware of the total

liability of this debatable choice. It is here that I might like to add that the most aggressive beast of all time is mankind.

If the Attorney General is sincere in wanting to solve this serious situation and win points and future votes for the Ontario Liberal Party, he must direct his attention to the Calgary dog bylaws. These bylaws put the onus very strongly on dog owners, with stiff penalties and heavy fines. This has been most effective, and also of financial benefit to the community. I would also like to suggest that the committee review laws regarding puppy farms that help to supply undesirable, unsound, sick canines.

The above approach is sensible. Do not try to terminate the very establishments that are seriously working to make Ontario and the entire country a safe and secure environment. Be assured that we will not accept unfair blame for crimes that the breed has not committed.

Our dogs are a limited breed here in Canada, and we are knowledgeable of our puppies and owners. If we can help in any way to be of constructive service, please do not hesitate to contact our registered breed club and us in general.

I am sure that the committee has heard enough statistics in these four days. Therefore I will close with one final, but most important, statement.

The Staffordshire bull terrier represents to me all that is good. They are true, honest, loyal, smart and brave friends. They give me strength when I have none. They inspire me to carry on in cases of adversity. They are the essence of my life. I am adamant and completely dedicated to upholding the reputation of the Staffordshire bull terrier as the most trustworthy, loving family member worldwide and I stake my life on this. *Nemo me impune lacessit.*

1620

The Chair: Thank you. We have time for one question.

Mr. Norm Miller: I would, first of all, just like to ask, are you the typical pit bull owner?

Ms. Mercier: No, I'm a Staffordshire bull terrier owner. I told you in the beginning that I'm here to defend them.

Mr. Norm Miller: That was my attempt at humour, actually.

Ms. Mercier: Did you get that right?

Mr. Norm Miller: My next question is, surely the government—I'm in the opposition—must have done some research before they introduced this bill. Why do you think they're calling a Staffordshire bull terrier a pit bull?

Ms. Mercier: I think they're just banning the whole concept of "bull," and that is wrong. Say a Canadian from another origin has committed a crime; say he comes from Italy. Does that mean that all immigrant Canadians, then, are guilty of the crime?

Mr. Norm Miller: Are you familiar with the number of Staffordshire bull terriers in England at all?

Ms. Mercier: No, but I do come from England. I do know that they are limited in Canada. For instance, in

Ottawa, where I come from, if you told me there was trouble with a Staffordshire bull terrier, I could easily say which one, because there are only about 16.

The Chair: Thank you very much for having come in today.

Ms. Mercier: Thank you. I now need a good cup of tea.

The Chair: That sounds like a very civilized idea.

CANADIAN ASSOCIATION OF PROFESSIONAL PET DOG TRAINERS

The Chair: Is there a representative present from the Canadian Association of Professional Pet Dog Trainers?

Please take a seat. Welcome this afternoon.

If you've been here for a while, you get the general drift: 15 minutes, and we'll divide up any time remaining. Please begin by stating your name for Hansard, and then proceed.

Ms. Keiley Abbat: Thank you. My name is Keiley Abbat. I'm here representing the Canadian Association of Professional Pet Dog Trainers. In my experience with dogs professionally since 1989, I have fulfilled many duties and held many positions and appointments in the canine world.

One point that I would like to bring up before I start my presentation is that this morning Attorney General Michael Bryant mentioned that he had secured extra funding for the Ontario SPCA and had spoken to the director of investigations, Michael Draper, and that there would be funding allowed for the SPCA's response and animal control actions. I would like to state that that is an incorrect statement on Mr. Bryant's part, even though the time is long overdue that the Ontario SPCA receive funding from Ontario and municipal governments. They are not an animal control service; they are an animal care and welfare service. That is their mandate, very much like the RSPCA in Britain. They are not responsible for animal control services; those fall on the municipalities. Animal care and welfare is their primary factor.

Now, my presentation: Many of the presentations you have heard to date have addressed the blatant shortcomings of the proposed Bill 132. As a representative of an association comprised of more than 500 professional dog trainers from across Canada and some members from the USA, I am here to address some of these shortcomings from the standpoint of canine behaviour.

It is the belief of the Canadian Association of Professional Pet Dog Trainers that the proposed Bill 132 focuses on the least impactful factors influencing canine aggression and ignores many other much more significant factors. This choice comes at the expense of future victims of dog attacks and will lead to legislation that not only fails entirely to address the question of public safety and dogs but in fact shows a contempt for it.

As it stands, Bill 132 threatens to fool the public into believing that the provincial government has taken sufficient action against canine aggression by targeting a single population of dogs whose numbers across this

province are insignificant and which is not representative of the vast majority of dog bites that require medical attention. Thus, Bill 132, as it is written, will lead the public to disregard the real causes of canine aggression at their own peril.

Canine aggression is not specific to one type or breed of dog. All dogs can bite. All dogs can inflict significant injury. Just over a year ago, I myself sustained a major facial bite from a whippet, hardly a dog that a layperson would imagine to be capable of such an injury. I received sutures across my upper lip, inside my mouth, under my chin and on my throat. As a professional dog trainer, even though I was surprised by the attack itself—and I will qualify that. As Marg Schneider from HABAC very eloquently put it earlier, anybody who works professionally with dogs should be able to read dog behaviour. If this dog had been in my field of vision, I would have been able to read its body language. It came at me and around me from behind. I did not know it was there. I was not surprised, however, that a whippet could inflict the damage it did. I was glad that no children lived with this dog. I could only imagine the damage that a five-year-old might have sustained if such a child were standing in my place at the time of the attack.

Canine aggression is caused or influenced by a number of factors, including the following:

(1) The dog's innate drives, which are prey, defence, food and reproduction.

(2) The lack of socialization. Dogs are pack animals. Dogs that are isolated, restrained via chain, tether or penning, or restricted from engaging in appropriate, natural social behaviours are more likely to display aggression.

(3) The lack of basic education, basic training and structured education for the dog. Without training, dogs have no skills that allow them to understand their place in our own human world. Untrained dogs tend to be viewed as nuisances to the people who own them, especially when they become adolescent, and are more likely to be isolated, dropped off at shelters, or under-socialized and given away. Untrained dogs are more likely to resource-guard, which is to protect items they individually deem to be valuable, which is the cause of a great number of pet dog bites.

(4) Their health, both emotional and physical. Dogs that are not afforded appropriate food, exercise and care, and those that are ill, physically compromised, in pain or parasite-ridden are at risk of demonstrating aggression.

(5) The behaviour of the potential victim needs to be taken into account. Provocation, physical assault on the dog, cornering the dog, surprise or unusual movement, running away, yelling and screaming can all provoke aggression in any dog.

(6) Poor breeding comes into question. Over-breeding, breeding without knowledge of genetics, repeated breeding of the same dam, or female, inbreeding, breeding unhealthy dogs together and breeding to enhance any sharpness or aggression all contribute to a propensity toward aggression in puppies that may be born.

(7) Intact, or unneutered, male dogs represent the highest risk for aggressive behaviour. In one study by B.V. Beaver, 1999—and it's included, if you'd like to find those studies—this population of dogs represented 80% of all dogs presented to veterinary behaviourists for "dominance" aggression or forward-threat aggression. Intact male dogs, in another study, are involved in 70% to 76% of all reported dog-bite incidents.

Knowing these key factors, there are numerous ways legislation can address canine aggression:

(1) How about enforcement of mandatory licensing programs? The Calgary model is exemplary. I haven't heard much in these deputations about the Calgary model, and we certainly haven't heard from Calgary themselves. I recommend that that be looked into.

(2) Requiring dog owners to attend mandatory training classes in order to obtain a municipal license.

(3) Enforcement of spay/neuter of all pet dogs or non-breeding or show animals as a prerequisite to obtaining a municipal licence.

(4) Supporting municipalities in their ability to provide sufficient animal control services in order to enforce leash laws, animal care and control laws, and education services. Is there an honourable member here who knows how many animal control officers serve the city of Toronto in a 24-hour period? The answer is two. How do you expect them to deal with the downloading of proposed Bill 132 with two animal control officers, who can hardly even respond to calls today?

(5) We also need to regulate breeders.

(6) How about the promotion of dog-bite prevention programs, specifically to school-aged children? Our money would be well spent on that. Dr. Stanley Coren, a well-known Canadian canine behaviourist, has recently completed a personal study where he determined that a one-hour dog-bite prevention class presented to children from kindergarten through grade 5 reduced their propensity to become dog-bite victims by 80%. That's money well spent.

(6) How about adopting a zero-tolerance policy and placing stricter repercussions on owners of dogs that have been deemed a threat to the community? For goodness' sake, can we start enforcing the Dog Owners' Liability Act?

The Canadian Association of Professional Pet Dog Trainers contends that by failing to address the key factors influencing canine aggression and their solutions, the government of Ontario is creating a red herring that will fail utterly in protecting Ontarians against dog bites. Further, by focusing on a single population of dogs, this legislation will deprive many responsible Ontarians of the right or opportunity to own a particular type of dog, with no legitimate justification, in an attempt to eradicate a mere fraction of the dog population as a whole.

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We challenge the government of Ontario to build legislation that will truly protect us. We offer our expertise in the field of canine behaviour and education in the development of such legislation. As a province, we

have the opportunity to craft legislation that is innovative, cost-effective, thoughtful, bold and proactive by taking meaningful action. The world is watching us. Currently, the proposed Bill 132 will not fulfill any of these objectives.

Over the last four days, this committee has heard from true experts in this field from around the country and the world. All of us are standing to be heard on this issue because we know that the current course of action is ineffective, costly, unenforceable and weak. But we are not here for these reasons alone.

We all believe, as evidenced by our submissions, that the Ontario government needs to take control of the proverbial leash regarding dog ownership and dog-bite prevention. Those of us who work with animals all work in the trenches on a daily basis. The CAPPDT, Canadian Association of Professional Pet Dog Trainers, joins with every other expert, individual or association that has provided science, experience and evidence before you regarding proposed Bill 132.

While a proactive measure to reduce dog bites is long overdue in this province, a breed-ban approach will hardly scratch the surface. In fact, it is likely to become an infection. It is tantamount to putting a Band-Aid on a deep wound.

Given the witness testimony from so many experts in this field over the last four days, can the government of Ontario truly say at this point that the proposed Bill 132 will protect Ontarians from dog bites? The answer is no. Can the government of Ontario ensure that dog bites will be reduced by banning a certain population of canines? The answer is no. Can the government of Ontario count on willing input, advice and participation from all the experts in the field in order to create meaningful legislation? The answer is yes. If the government of Ontario decides to proceed with the current proposed legislation as it stands, can it expect that this legislation will be costly, ineffective, and eventually backfire in their faces? The answer is yes.

Thank you for your time.

The Chair: We have a little bit of time for questions, leading off with the government side.

Mr. McMeekin: Thanks very much for your presentation. I was going to ask about some kind of mandatory bite training in the school system, but you tackled that. Then I was going to ask about dangerous dogs and differential treatment of owners who are designated to have dangerous dogs, but you handled that.

Ms. Abbat: Let's use our Dog Owners' Liability Act as its written.

Mr. McMeekin: But what you really grabbed me on was when you said government should be about innovative, thoughtful, bold, proactive and cost-effective measures, and you specifically mentioned Calgary. Can you say a little bit more about why you like the Calgary approach? What is there about the Calgary approach that's missing from the Ontario approach?

Ms. Abbat: Pretty much everything. Sorry, but it's true.

Mr. McMeekin: I've opened the door for you.

Ms. Abbat: From what I understand of the Calgary approach, they have taken animal control services quite seriously. They have not removed budgeting, as we have, from municipalities across Ontario. In fact, they have enhanced and implemented budgeting. They have upped the salaries of the animal control officers so that their jobs are more attractive. They have provided them with adequate training and the numbers they need in order to provide mandatory licensing. They have a zero-tolerance policy on licensing at this point.

In a city as large as Toronto, where an estimated 10% of the dogs are licensed, it's definitely a clear task. But especially since amalgamation, year after year after year the department of public health's animal control services budget in Toronto has been cut back. This is an animal control service serving over two million people, pretty much. With two officers in the field at any given time, it's an embarrassment; it really is.

Calgary has also been able to pay for itself through mandatory enforcement.

Mr. McMeekin: So it's self-financing?

Ms. Abbat: It's self-financing at this point, apparently.

Mr. McMeekin: And they're not doing it on the cheap?

Ms. Abbat: From what I understand, it's completely self-financing and it's not done on the cheap.

Mr. Norm Miller: I'm very happy you brought up Calgary. As this committee started four days ago, the first thing I tried to do was get Mr. Bill Bruce, the director of bylaw services for the city of Calgary, invited to testify before the committee.

Ms. Abbat: Yes, I read it in Hansard. I realized there was some opposition from the government, and I don't understand why. If this is open, why aren't we hearing from everybody?

Mr. Norm Miller: My point exactly. He has been invited to make a written submission, so we're looking forward to receiving that. I gather that in Calgary they are self-funded, because something like 90% of the dogs are licensed. I believe each licence is \$50, and with that money they are able to enforce the rules they have. That's more a city bylaw.

On a provincial level, what sorts of other things should we be doing? For example, we have a license for just about anything now. If you want to operate a boat in this province, you have to pass a test and get a licence. Should a dog owner be required to have some education and get a licence?

Ms. Abbat: Absolutely. It's the stand of the Canadian Association of Professional Pet Dog Trainers as an organization, as witnessed through this document I've presented to you today, that we strongly believe in humane training as a way to ensure the safety and sociability of a dog living in an urban, or even a rural, environment.

The population of dogs in urban environments has really jumped in the last 10 years. In Toronto, they

estimate that one in three homes has a dog. That's huge. Dogs are now being brought into our family a lot more than they were in the past. They're being treated as family a lot more than they were in the past. With the growth of population in some of our major urban environments and the growth of the dog population, there's a lot more interaction between people and dogs than there was in the past. We now have off-leash parks. So training of a dog should be made mandatory. It also educates the owner as much as it educates the dog.

The Chair: Mr. Kormos, any questions? No?

Thank you very much for having come in today and delivering your submission to us.

Ms. Abbat: Thank you.

MIROSLAW SLONSKI

The Chair: Mr. Mirosław Slonski, with a very helpful box of material for the clerk to distribute. Please be seated. Good afternoon; dzień dobry. Mr. Slonski, I think you've been around long enough to get the general gist of how things go. You have the distinct recognition of getting the last word here in these four days of hearings. Please state your name clearly for Hansard and proceed.

Mr. Mirosław Slonski: I'll try not to put you all to sleep. My name is Mirosław Slonski. Mr. Chair, standing committee, thank you for providing me with the opportunity to speak to you in regard to Bill 132. This is a summary of my written submission. The submission that has been circulated is somewhat more extensive than what I'm going to present to you because of time constraints.

I am a professional engineer and hold a master's degree in aerospace engineering from the University of Toronto. I am the owner of an American Staffordshire terrier adopted from the Toronto Humane Society nearly 10 years ago. My dog has been neutered and obedience trained, is well-socialized and microchipped, yet with the introduction of Bill 132, I am being put in the same category as irresponsible owners and criminals.

I am against the breed-specific portion of the proposed law, although I do endorse legislation that puts the onus of responsibility on the dog owner regardless of breed.

The Attorney General used US statistics to suggest that pit bulls are more dangerous than other dogs. Mr. Bryant stated that pit bulls account for over 50% of serious dog bites but comprise less than 1% of the dog population. This statement is a combination of two completely different and independent studies.

The 1% of the dog population was quoted by Alan Beck, who derived the number from United Kennel Club purebred registrations. The validity of using purebred dog registration numbers to ascertain the percentage of unregistered dogs among the entire dog population is questionable at best. The figure of 50% is based on a completely unrelated, also American, study of 59 vicious repeat-offender dogs, where 28 of the repeat offenders were pit bulls. Then Mr. Bryant proceeded to attribute this finding to the entire dog population.

This type of method is effectively equivalent to conducting a study of a small, selected group of people, recording, for example, the type of education they received, and projecting the findings over the entire population of Ontario.

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Were manipulated US statistics used because Canadian statistics do not support the Attorney General's theory? In Canada, numerous studies found that pit bull bites consistently account for 5% to 10% of all bites, while another breed—I won't mention the breed's name at this point—accounts for 30% to 40% of bites. The government insists somehow that pit bull attacks are more severe. Now, what is more severe than a fatality? Other breeds are responsible for up to four times as many fatalities in Canada as pit bulls. Out of 23 fatal attacks recorded in the last 20 years, pit bulls were responsible for only one incident, where the dogs were provoked by a person under the influence of alcohol.

The Liberal government would like us to believe that there is great public support for the pit bull ban, while the experts in the field oppose breed-specific bans and support non-breed-specific legislation. In doing so, the Liberal government is weighing the professional opinions of the experts against the opinion of the general public, whose opinion is influenced by frequently false and sensational media reports. As a professional engineer, I find this practice highly alarming. Engineering practice is very strictly controlled by a number of codes and regulations, all developed by subject matter experts in order to best protect the public. It is absolutely inconceivable that any codes and regulations pertaining to public safety would be imposed by politicians without regard for the opinions of the experts. Allow me to ask this of the government: When constructing a bridge, is it not the position of the government that the adequacy of design, materials and construction methods require the application of engineering principles and best practices, or should it be decided by a public vote? I can assure the committee that if a public vote were chosen, all buildings and bridges would collapse, airplanes would fall out of the sky, and cars would speed off and crash killing all occupants and bystanders.

I was very troubled when I heard a retired school principal, an educator, insist that education does not work in the real world. From my professional experience, I know this not to be true. At present, I am a senior engineer at Bruce Power, a company well known and recognized for, among many qualities, its commitment to safety. We are currently nearing 7.5 million man-hours without a lost-time accident. This recently achieved exceptional safety performance has been attributed to the use of education to increase safety awareness among the employees. While the industry has been strictly regulated for many years, it has been the safety education that has shown improved results.

The Chair: Mr. Slonski, you have just over three minutes left.

Mr. Slonski: Thank you, sir.

There have been numerous reports of innocent dog owners, frequently of breeds not even affected by the ban, being assaulted by militant pro-ban individuals. Some of these militants have taken things to the extreme. For example, a bag of bullets with a threatening note against pit bulls was found in a popular children's park in Toronto. Clearly, public safety is not improving. Is the media hype, the falsification of pit bull attacks, the spreading of urban myths and fearmongering within the province what the Liberal government wishes to be known for?

Attorney General Michael Bryant and the Liberal government, let's set both a national and international standard. Don't senselessly punish dog owners who are already responsible. Let's set aside our differences, political and otherwise, and work together to develop non-breed-specific legislation that will make all dog owners responsible for their pets. Don't let Courtney Trempe's death by a bull mastiff be in vain. Hold irresponsible dog owners, especially those whose dogs inflict fatalities, fully accountable to the law. All of us who have presented during these hearings are here to work with you to draft effective legislation.

I welcome any questions, if there are any.

The Chair: Thank you very much. We have time for one brief question from each caucus, beginning with Mr. Tascona.

Mr. Tascona: Thanks very much, Miroslaw, for being here all day. You do have the distinction of being the final presenter on Bill 132. Hopefully, Bill 132 won't go forward, because we've still got a way to go. But your points are well taken. I think education and the lack of direction in the bill regarding responsible dog ownership are what have concerned a lot of the people who have been here. There's a misperception that the pit bull problem will stop when this bill is passed, yet pit bulls will still be on the streets.

Mr. Slonski: That is correct. In fact, I may be speaking a bit out of turn, but as I've seen in recent media reports from Winnipeg, which is touted as an exemplary example of pit bull ban success, pit bulls are still being found in basements, so clearly, they're not off the streets. On the same note, the dog-bite numbers did not reduce for a number of years along with the pit bull ban.

Mr. Kormos: Mr. Slonski, thank you kindly. You're an engineer?

Mr. Slonski: Yes, sir.

Mr. Kormos: I read attachment K to your report. I didn't know the history of the iron ring. I trust that the reference there is to emphasize the point that if you ignore science and hard data, you do so at your own risk.

Mr. Slonski: That is exactly correct.

Mr. Kormos: If there were hard data that indicated pit bulls, or let's say any other given breed, had an arguably disproportionate and higher rate of attack and consequence, would your position be the same as it is now?

Mr. Slonski: If there were hard evidence, I would absolutely agree with the legislation. As a professional engineer, I am sworn to protect the public. I have to set

aside my own personal predisposition or convictions to protect public safety. So yes, I would completely agree with the bill if there were solid evidence to support the claim.

Mr. Levac: Thanks very much for your deputation. I've been able to sit in on two days' worth of the hearings and heard very explicitly the concerns being laid out about the particulars of the legislation. My purpose as an MPP in these kinds of situations is to listen carefully.

I saw a videotape from an expert—I can't recall the person's name, but they were underlined as an expert on dog behaviour—that indicated that some breeds should not be allowed even in leash-free parks because of their predisposition toward the possibility of misbehaving and not being close enough to be controlled.

Mr. Slonski: That is possible, but, as I said, I am not aware of that, nor am I an expert on dog behaviour. My concern with this bill is that experts on dog behaviour do not appear to have been consulted, since in great numbers they oppose the bill.

Mr. Levac: OK. That's fine.

Mr. Zimmer: Mr Chairman, on a point of order: The previous witness, Ms. Abbat, in her deputation asked if we had received information from the city of Calgary. I think that was the request that the committee sent to the

city of Calgary, for a deposition from—the name escapes me now, but I think that's what the previous witness was looking for. Have we received that?

The Chair: It was to Mr. Bill Bruce. The status of that is that the clerk immediately contacted Mr. Bruce and made the request. Mr. Bruce acknowledged the request, and to date no such submission has been received.

Mr. Tascona: On a point of order, Mr. Chair: The deadline is today at 5 p.m. Isn't that correct?

The Chair: It is.

Mr. Tascona: Mr. Arnott hasn't been back to his office, so he wouldn't know at this point.

The Chair: It's very possible that Mr. Bruce's submission may yet be awaiting him.

Ladies and gentlemen, this concludes our four days of public hearings on Bill 132. On behalf of the standing committee on the Legislative Assembly. I'd like to commend all our participants and our deputants for your presentations and for your advice. This is advice to the Ontario Legislative Assembly. Based on your input, the parties and the ministry staff now have a large body of research, information, opinion and anecdotal experience to consider in the evolution of Bill 132. I thank all those who have attended. These hearings are now adjourned.

The committee adjourned at 1649.

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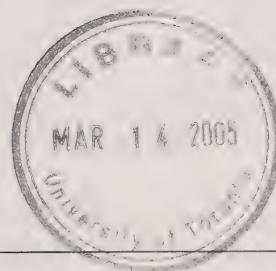
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Jeudi 10 février 2005

Standing committee on the Legislative Assembly

Public Safety Related to Dogs
Statute Law Amendment Act,
2005

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Loi de 2005 modifiant des lois
en ce qui concerne la sécurité
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L'ASSEMBLÉE LÉGISLATIVE

Thursday 10 February 2005

Jeudi 10 février 2005

*The committee met at 1006 in room 228.*PUBLIC SAFETY RELATED TO DOGS
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI CONCERNE LA SÉCURITÉ
PUBLIQUE RELATIVE AUX CHIENS

Consideration of Bill 132, An Act to amend the Dog Owners' Liability Act to increase public safety in relation to dogs, including pit bulls, and to make related amendments to the Animals for Research Act / Projet de loi 132, Loi modifiant la Loi sur la responsabilité des propriétaires de chiens pour accroître la sécurité publique relativement aux chiens, y compris les pit-bulls, et apportant des modifications connexes à la Loi sur les animaux destinés à la recherche.

The Chair (Mr. Bob Delaney): Good morning, ladies and gentlemen. This is the standing committee on the Legislative Assembly. This morning we are here to do clause-by-clause on Bill 132, the Public Safety Related to Dogs Statute Law Amendment Act. Pursuant to the subcommittee report, each recognized party may make an opening statement. Mr. Tascona or Mr. Miller, do you have a statement?

Mr. Peter Kormos (Niagara Centre): On a point of order, Chair: It's the government's bill. They're the ones pitching it. Why shouldn't they be called upon to make the first opening statement?

The Chair: Mr. Zimmer, would you care to make the first opening statement?

Mr. David Zimmer (Willowdale): Sure.

I'd like to take a couple of minutes and thank everybody who has participated in this process over the last four days with their attendance and all those who submitted a written submission. We have reflected on all of those submissions, oral and written, and I can tell you that all those presentations have convinced me that, more than ever, we need this legislation.

I was particularly impressed and particularly moved by the testimony of the victims who urged us not to forget them at the end of this exercise.

Among animal experts, opinion is not unified, but I was most impressed by the experiences of jurisdictions where a ban has in fact been put in place, places like Winnipeg and Kitchener-Waterloo, places where the ban

has proved effective. It has prevented attacks and has prevented people from becoming victims again.

For these reasons, the government will move on this legislation. We aoliferation of the most severe, the most vicious type of attack dog. The second prong, which operates beside the first, provides incentives and, yes, punishments in place to ensure that dog owners act responsibly so that their dogs will not be involved in ongoing bites and attacks.

Let me speak to the first part of our strategy. Bill 132 proposes to ban pit bulls in Ontario. Some have argued at the hearings that a pit bull can't be defined. Some have gone so far as to argue that there is no such thing as a pit bull. The truth of the matter is, a pit bull can be defined. A pit bull is a pit bull terrier, a Staffordshire bull terrier, an American Staffordshire terrier, an American pit bull terrier and a member of a class of dogs that have an appearance and physical characteristics substantially similar to any of these.

Dog registries have created breed definitions for the breeds identified by Bill 132. Breed definitions are very specific and enumerate many reference points on a dog to help determine its breed. We have confidence that these same reference points will enable identification of pit bulls under Bill 132. To help ensure that this is the case, I will be introducing amendments to the definition of "pit bull" that make specific references to these registry standards.

Furthermore, many jurisdictions within North America and around the world use substantially the same definition to describe a pit bull, and most list the same breeds. The best example is Winnipeg, with its 15-year experience of using substantially the same definition as in Bill 132.

The point is that pit bulls can be defined. Others have argued throughout the committee hearings that breeds and crossbreeds identified in Bill 132 do not pose a threat to the safety of Ontarians, or that if they do, it is a threat that is no greater than any other threat posed by any other dog. Yet we've also heard testimony that, in fact, there are qualitative differences in the manner in which dogs bite. One witness went so far as to provide an escalating classification of the method with which dog bites are classified. In fact, that piece of evidence was very helpful in understanding the nature of dog bites.

Which dogs are capable of which biting is another story. Different breeds of dogs of different sizes, differ-

ent teeth, different jaw structures, different physical strengths, different mentalities and different dispositions will produce different bites, and will attack in different ways. That's just common sense.

Pit bulls, as defined in Bill 132, are predisposed biters and attackers. They're built for it. According to the major dog registries, they are muscular, agile, courageous, tenacious and confident, and have prominent cheek muscles. They're bred for that. Just as other dogs were bred for retrieving or smelling, pit bulls were successfully bred to fight.

In a submission to the Attorney General dated September 15, 2004, Tim Zaharchuk of the OVMA, the Ontario Veterinary Medical Association, stated: "Any dog selectively bred, reared or trained for aggressiveness can pose a significant danger." That's true. This is the pit bull. It's been selectively bred this way for such a long time that it now has the innate characteristics of viciousness and attack.

Some have argued that banning pit bulls would simply transfer the problem to another breed. The truth of the matter is that this has not happened in Winnipeg or Kitchener. That has not been their experience. These other breeds that have taken the place of pit bulls have not proven to attack or cause damage like pit bulls.

All dog breeds identified as pit bulls derive from the same source. Breeders who bred dogs for fighting created the bull terrier from crosses of bull-baiting bulldogs. Unrelenting bravery, a high pain threshold and a willingness to fight to the end, to not let go, that's the lineage of the pit bull as defined by Bill 132.

As Chief Fantino and many victims have said, we have to deal with the reality, and the reality is that pit bulls are a serious threat to public safety. We've heard from many victim and witness accounts that the characteristics bred into pit bulls survive to this day. When pit bulls attack, they do so relentlessly and powerfully. They don't let go.

The Chair: Mr. Zimmer, you have about three minutes.

Mr. Zimmer: Thank you. I'm going to skip ahead here.

Bill 132 demands responsible ownership for all dog owners by raising the fines for offences from \$5,000 to \$10,000 for individuals, or \$60,000 for corporations, along with introducing the possibility of a jail sentence. Restitution can also be ordered.

In addition, it should be mentioned that in our upcoming motions we will be taking the focus on responsible dog ownership a step further is currently provided for in Bill 132 by including a provision that requires owners of dogs to exercise reasonable precautions to prevent their dog from biting or attacking a person or domestic animal, or behaving in a manner that poses a menace to the safety of persons or domestic animals. Contravention of this provision is an offence and offenders will be liable to the same punishments as just mentioned.

In summary, this is good legislation.

I want to speak to one matter, on the reverse onus. We are bringing forth a motion relating to the reverse onus provisions. Many have stated that it's unfair to require a dog owner to prove their dog is not a pit bull when they face the possibility of a prison sentence. Let me say that the government agrees, and we will be proposing an amendment to Bill 132 that will eliminate the reverse onus clause for offences under the Dog Owners' Liability Act. In its place, the government proposes to substitute a provision that clearly details the quality of evidence required for the government to prove that a dog is a pit bull.

Bill 132 will increase public safety, for children, for police, for all Ontarians. It will protect the people and prevent future attacks. It will spare the people from becoming victims. It's what the people of Ontario deserve.

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford): I'm very pleased to provide comments by the PC Party with respect to Bill 132. The PC Party accepts the principle that the public must be protected from dangerous or vicious dogs. That's been accepted throughout these hearings. But it does not believe that the Liberal government experiment through Bill 132 to ban pit bulls, whatever that term may be based on—we've heard from the experts in our presentations during the hearings that this is not an exact science. The Bill 132 strategy in essence is to ban pit bull breeding from this province three months after Bill 132's passage, which will provide, in the Liberals' view, protection for the public that they seek and deserve.

1020

The main reasons we object to this bill are:

(1) That the criminal element will continue to use pit bulls as the dog of choice in their business. We've heard from the police associations and Chief Fantino that this will continue. Bill 132 will not change this. How can it change it? Because the pit bulls that are alive and breathing today will still be alive and breathing after Bill 132 becomes law.

(2) The Dog Owners' Liability Act, which contains provisions to protect the public from vicious dogs, is not being properly enforced. Bill 132 does not provide any improvements to enforcement, and no funding is to be provided to municipalities to improve their enforcement. That is out of the direct words from the Attorney General. We've heard from municipalities throughout the hearings that they do not support Bill 132.

The Liberals are spinning Bill 132 in a way that is disingenuous in that the public has a false sense of security. From what we've heard, the public believes that after Bill 132 is passed, there will be no more pit bulls on the street, and that is an utter falsehood; there will be.

(3) There are no measures in Bill 132 to ensure dog owners are responsible or for a dog-bite-prevention strategy. Throughout the hearings we heard about measures that could make dog owners more responsible and for a dog-bite-prevention strategy. There are no measures in Bill 132 to address that, and the Liberals did not address

that in their amendments. The PC Party has amendments to address the failings of Bill 132 in this area and we'll hear them today as we present them.

The Liberals, by their amendments to Bill 132, did not listen to the public. With the full knowledge of the dangers of litigious and court-delayed proceedings arising from the UK experience, the Liberal amendments focus on evidentiary and legal procedures to assist the court in pit bull identification. No government amendments are there to ensure responsible dog ownership or to ensure that Bill 132 will be enforced by municipalities more effectively than the Dog Owners' Liability Act. That is the core problem. That's what the government hasn't addressed: responsible dog ownership and the enforcement mechanisms to make sure that the public is protected. Going through this exercise is a complete and utter joke, because the act needs to be better enforced. It's not being enforced, the government's not addressing that, and the Attorney General says there will be no money to municipalities to help in the enforcement.

The amendments of the PC Party to Bill 132 focus on a number of areas:

(1) The removal of the pit bull breed ban. Why? It will not work to better protect the public. Irresponsible dog owners will still have pit bulls or some other dogs to harm the public.

(2) In the proceedings against dog owners, under section 4, since enforceability is already a problem where a dog bites or a dog attacks, the term "behaviour that poses a menace," which will be a new offence under the legislation, is far too vague and subjective to be credible. Plus, it will be a waste of precious court time dealing with what poses a menace through dog behaviour, because we're already dealing with dog bites and dog attacks in the legislation. The prosecution's job to try to get a conviction will be even more difficult, and the accused's rights are not sufficiently protected, because the term is far too vague. Let's be frank: What is a menace is obviously in the eye of the beholder. So that type of terminology and a new offence, we feel, is not supportable. It's not good law and, quite frankly, it's not going to result in anything to better protect the public.

(3) We've introduced proactive measures to protect the public and promote safety. What we're asking the government to do through our amendments is in a number of areas, and I'll read them.

We want them to ensure that municipalities have the resources they require to enable them to provide effective municipal dog control in the interests of public safety.

We want the government to provide for the development and implementation of a comprehensive program, including education, training and other measures, to encourage responsible dog ownership.

We want the government to provide for the development and implementation of a comprehensive dog-bite-prevention strategy, to encourage dog owners to take all reasonable steps to prevent their dogs from biting persons or domestic animals.

Finally, the government should provide for the establishment and operation of a province-wide dog-bite

registry. We've heard throughout the hearings that this is something that could be done to make sure that the public is better protected. The government has not listened. In fact, these hearings have become nothing more than basically legal chess work on how to develop mechanisms to make sure that the embarrassing provision of the reverse onus isn't as embarrassing, because of the methods that they want to put into the court system. These are strictly court amendments that the Liberals have put forth, and they have not listened to anybody during the hearings.

We feel what we're putting forth are proactive measures to protect the public and promote safety. I challenge the government not to support these measures that we're putting forth as amendments. If they don't support them, what they're really saying is that they don't really care about protecting the public, because they're not putting forth any proactive measures with respect to responsible dog ownership, with respect to municipal bylaw enforcement, and making sure that the public is better protected.

In closing, we can support Bill 132 with our amendments, which will ensure that the public is better protected from dangerous dogs. I put it to the government side that if they truly listened and in fact these hearings were more than just an exercise that they had to go through to make sure they got their bill into the Legislature after second reading, they'll take very seriously the amendments with respect to any regulatory powers that they can put forth. They'll listen very carefully, and in fact if they do support better protection of the public, they'll support these amendments as part of Bill 132. Thank you, Mr. Chair.

The Chair: Thank you very much. Mr. Kormos.

Mr. Kormos: All of us, I'm sure, express our gratitude to the staff who have worked with this committee, but exceptionally to Philip Kaye, the researcher who has been with us, who really has had an incredible workload imposed on him in this compressed period of time, and who indeed, unlike the government, has delivered. He made a commitment: He made promises to get that material requested available to us, and he kept his promises, Mr. Zimmer.

It also should be noted that I've been involved in a lot of committee work over a lot of different issues, many of them contentious, like this one was, where there was some apparent polarization amongst the committee and the participants. I've got to tell you this, and I think we've all witnessed it: If there has been any rancour, it has been directed toward the committee or the government, or members of the committee. We've seen participants in the public hearings, adamantly pro and adamantly con the legislation, sit side by side and behave in a remarkably civil manner. I want to applaud the participants for that particular behaviour. It was noteworthy.

Mr. Zimmer, I think you deserve some commendation as well. Nothing drives senior political staff crazier than a PA or a cabinet minister who doesn't stay on script, and you have blessedly, from the point of view of your handlers, stayed on script to the final moment, even the

remarks that you read into the record today. I note that you've got, let's see, I count nine in your entourage—I figure at a cumulative salary of maybe \$600,000 a year at least, when all is said and done—all here today. Not babysitting you; not monitoring. The House leader doesn't send his representative out to these committees to monitor government members, but surely to be in a position to report back that you, Mr. Zimmer, have stayed on script.

1030

But I want to say this: If anything, the government approach to this issue has been rife with mountebankery from the outset. Tell Mr. Bryant this, please: There is nothing commendable, ever, about simply making things up when you don't know the facts. That's never commendable. It's never worthy of praise. I regret that what we've experienced is an argument from the government, which made a political investment in this issue by virtue of the announcement of Mr. Bryant some months ago, that has been inclined, from time to time, to rest upon fabrication when facts either weren't available or simply weren't sought out. That is disappointing and regrettable.

I also want to say that I find it extremely distasteful, quite frankly, that anybody in this committee or outside this committee would link criticism or non-support for this bill with non-support for victims of dog attacks, be they vicious pit bulls or dogs of other breeds. It's simply not the case. Accuse me, if you want, of being unsympathetic and unsupportive of insurance companies, banks, bad bosses, any number of things, but don't accuse any member of this committee of not having a great deal of sympathy and concern for people who have been victims of vicious dog attacks. That's simply unbecoming.

In fact, it was the participation of victims of horrific dog attacks that has provided some of the most interesting material for this committee to digest; that is, the observation that almost to the final one, but for the victim in Toronto, wherein criminal charges were laid as a result and a significant custodial sentence imposed, as lawyers are wont to say—the guy went to jail for a year, we're told. I'm sure nobody has any sympathy for him, the guy who owned a dog that chewed its victim. But remarkably, the vast majority of victims of very vicious, very serious dog bites didn't have the comfort of having authorities in their respective communities proceed with action under the Dog Owners' Liability Act.

The amendments are to the Dog Owners' Liability Act. You're not rewriting vicious dog legislation in the province of Ontario; you're amending it. The primary thrust that has been there in the Dog Owners' Liability Act for a considerable period remains the substance of this government's vicious dog legislation, and not inappropriately. But the problem is that the Dog Owners' Liability Act hasn't been enforced. We heard, in one of our sessions, of at least one instance where, had the Dog Owners' Liability Act been utilized by local authorities, the second attack by that dog would not have taken place.

Mr. Zimmer, as parliamentary assistant, you refer to your amendment to I believe section 19 of the bill. I'm

confident that your Hansard comments will find their way into a courtroom at some point, either in support of a defence counsel's submissions or in support of a prosecutor's submissions. I suspect more so the latter. I disagree with you about the ease with which we can identify a dog as a pit bull. Whether or not a pit bull can be clearly, discriminately defined remains, in my view, uncertain.

But I have no uncertainty as to defining a vicious or dangerous dog, and that is where we're coming from. You'll see by the amendments that the New Democratic Party has put forward that we quite agree that what are colloquially known as pit bulls out there on the street—the biker-gang, street-hood, drug-dealer pit bulls—are undesirable. In fact, that's why we've introduced and will be moving an amendment. I think this is one of the critical oversights of the government. One of the consistent themes of participants in these hearings, from experts, was that dogs that aren't kept for breeding or for showing should be neutered or spayed. It prevents regrettable breeding. It prevents the backyard breeding, undeniably, of small-p, colloquial "pit bulls" that are being bred by unlicensed and rogue breeders to create a bigger and tougher and meaner pit bull, just as these same people are doing with Rottweilers and Dobermans, among others.

I can't believe that you did not respond to the call for all dogs who aren't show dogs or licensed breeding dogs to be neutered or spayed. That's why we're moving that as an amendment to this legislation. That would have the effect of eliminating these rogue, non-purebred pit bulls. The evidence was also clear—we heard it from Kitchener, as a matter of fact. Take a look at the Kitchener statute and you'll see that Kitchener very specifically—you're enamoured with Kitchener and its councillor, a former Liberal candidate who advocated the legislation for this government. You'll note that in Kitchener, they excluded purebred American Staffordshire terriers and Staffordshire terriers. There was clearly an acknowledgement that people who are licensed breeders, people who adhere to the standards of the Canadian Kennel Club, the American Kennel Club, the American Pit Bull Breeders Association, the United Kennel Club of Great Britain and who breed dogs in compliance with those standards, have no interest whatsoever in breeding a vicious dog. In fact, they go out of their way—that's their *raison d'être*: to breed dogs that conform to the standards.

I agree with your observation that none of the standards for a pit bull or an American pit bull or a Staffordshire terrier, nor the standards for so many other dogs, none of which are included in your bill, include viciousness. Surely you don't just dismiss out of hand the observations about the Staffordshire terrier, the "nanny dog." It is an incredible inherent contradiction.

Section 19 and its amendments notwithstanding, and indeed notwithstanding the warning by one solicitor, Mr. Roman—gunslinger Roman, telling Clay Ruby to watch his step because there's only room in this town for one dog litigator. He's going to whip Mr. Ruby's ass. That's

the clear impression he wanted us to have. Well, that's one pit fight I'm looking forward to. I'll be at that ring and I'll be laying down money, make no mistake about it. If you want to take my bets, let me know now.

I predict that your inclusion of the Staffordshire terrier as an indicator of what defines a pit bull is going to muddy the waters even further, because the Staffordshire terrier, by all evidence, is the exact 180-degree opposite of the small-p, colloquial pit bull that you want to deal with, that we all want to deal with.

Enforcement: Refer to the lack of enforcement of the Dog Owners' Liability Act. Mr. Kaye, legislative research, indeed came up with the data around the serious shortage of justices of the peace, the serious shortage of courtrooms, the fact that municipalities are going to be keeping dogs in custody, so to speak, as evidence, for up to six months before these things go to trial.

1040

The Chair: Mr. Kormos, you have about three minutes.

Mr. Kormos: Thank you, sir. There just ain't room at the inn for the dogs that you anticipate apprehending. You are not eliminating pit bulls of the face of Ontario geography. Indeed, by grandparenting de facto, even rogue, pit bulls—pit bulls bred to be vicious by rogue breeders, by the drug dealers, the gang members, the outlaw bikers—you're acknowledging that we're going to have pit bulls wandering Ontario for at least the next 12, 13 or 14 years, the lifespan of pit bulls that are born at the time of or reasonably soon after this legislation becomes law. So there's a significant flaw right then and there in your approach to this matter.

You've got a majority. You signalled very clearly in your opening comments this morning, the script you got today made it quite clear, that the government was forging ahead and was going to pay little heed to opposition amendments.

I'll tell you this: New Democrats are interested in a far more serious and more aggressive and tougher approach to vicious dogs and to attacks by vicious dogs than the government is. Make no mistake about it: Our amendments are to that end. We only wish that you were more interested in dealing with bona fide vicious dogs than your Attorney General is with cheap headlines.

The Chair: Thank you very much. Are there any comments, questions or amendments to any section of the bill, and if so, to which section?

Mr. Tascona: On a point of order: There were two amendments that I believe the clerk has circulated. We would request that those be included in the package. Perhaps the clerk can comment on that.

The Chair: I believe they are included in the package.

Mr. Tascona: Is that acceptable?

The Chair: There were two amendments, submitted this morning, included in the package: 2(a) and 12(a).

Mr. Zimmer: Are they set out in the package from Mr. Arnott dated February 9?

Mr. Tascona: I told you this morning that they weren't. They were given to be done, but they weren't done, unfortunately. There was a clerical error.

Mr. Zimmer: So where would they fit into that?

Mr. Tascona: They would fit in 2(a) and 12(a).

The Chair: Are there any amendments to section 1?

Mr. Tascona: The official opposition has an amendment. I have an amendment to subsection 1(2) of the bill, section 1 of the act, the definition of "pit bull."

I move that the definition of "pit bull," as set out in subsection 1(2) of the bill, be struck out.

The Chair: Is there further debate?

Mr. Norm Miller (Parry Sound-Muskoka): Listening to the opening comments by the parliamentary assistant, I got the feeling that I attended a different four days of public hearings. When I looked through the summary done by the researcher, Mr. Kaye, that confirmed overwhelmingly the evidence we've heard in the last four days that breed-specific bans are not effective. The parliamentary assistant has attempted to rewrite history and create his own version of the world, but he's just making things up; that's all I can tell you. Certainly, based on the evidence we've heard, it's not the real situation.

He neglected to mention the case of Calgary, which has been the most successful jurisdiction in this country in terms of reducing dog bites. You've got that information. If you've had a chance to look through the summary of information, there is information from Calgary showing the huge reduction in dog bites that they've achieved. They haven't done it through a breed-specific ban; they've done it through a comprehensive bylaw that includes licensing and strict rules to do with leashing and for the owners of dogs.

We've heard that in other jurisdictions—if you look in the research provided by Mr. Kaye, you'll see the history of breed-specific bans in the United Kingdom. The United Kingdom tried a breed-specific ban for a number of years and has repealed that. Overwhelmingly, we've heard that specific-breed-ban legislation is not effective.

Certainly, one of the most compelling testimonies we heard in the last four days—and I don't know where the government was—was when Donna Trempe was here. She had the courage to come before this committee and give testimony about the fact that her eight-year-old daughter Courtney was killed—not by a pit bull but by a bull mastiff. To my amazement, she came and testified that this breed-specific legislation did not make sense, and that was very compelling testimony.

The evidence we've heard has been overwhelming. There's page upon page upon page, if you look through the summary of the research, from those people who came before this committee, stating with various reasons that a specific breed ban does not work. We heard from the veterinarian from Kitchener, who brought information and research on the four pillars on which the breed ban was put in place in Kitchener and methodically went through and disproved three of the four pillars.

The evidence has been overwhelming. The time frame of this committee has been so tight that it doesn't allow a lot of time to make use of the good research that Mr. Kaye has done. I question why the government would want to rush this through so quickly, because certainly an extra week to absorb all the research and all the submissions that have been made before this committee would be very useful. But the fact of the matter is, we've heard overwhelmingly from experts, from veterinarians, from humane societies, from the gentleman from Sudbury who has been an animal control officer for 20 years and dealt with thousands of dogs—when he was asked about pit bulls, whether they were more dangerous than any other kind of breed, he said that no, they were not.

Overwhelmingly, this specific breed ban does not achieve the goal of making Ontario safer, of reducing the number of dog bites. In fact, it may create a false sense of security, because the general public will think that everything is fine now and that they will be safe, when in fact they will not be safer than they currently are.

So I think we've heard overwhelmingly that a specific breed ban does not make sense, and that is why we've moved this amendment.

Mr. Kormos: I want to respond, and if I misinterpreted, please correct me, Mr. Miller. I am a little taken aback by your suggestion that Mr. Zimmer has made stuff up. Does the actor who's playing a role and responding to the director and the script make stuff up? No. The playwright makes stuff up; the actor merely does the performance. So if that accusation is to be made, it's certainly not to be made about Mr. Zimmer.

Mr. Tascona: No offence intended.

Mr. Kormos: Right.

The Chair: Mr. Kormos, any comments?

Mr. Kormos: No. I was just coming to Mr. Zimmer's defence.

The Chair: The thespian digression aside, anything further?

Mr. Zimmer: I want to state on the record, with respect to Mr. Miller's comment, that Great Britain has not, in fact, repealed their ban.

The Chair: Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.
Comments, questions and amendments?

1050

Mr. Kormos: An amendment by the New Democrats is next, number 2. However, just to be fair, the Conservatives filed an identical amendment. What the heck? Even though theirs was filed later than the New Demo-

crats', I'll defer to the Tories and give them a little bit of—

Mr. Tascona: You don't have to.

Mr. Kormos: That's just the kind of guy I am. You know that, Mr. Tascona.

Mr. Tascona: I can only comment that you're ahead of us there. You're number 2. We're 2A. You proceed. Be my guest.

Mr. Kormos: All right, thank you kindly. I shall move that—

The Chair: Mr. Kormos, do you withdraw the amendment?

Mr. Kormos: Well, is Mr. Tascona taking up the offer?

Mr. Miller: I'll move that.

Mr. Kormos: Yes, go ahead, Mr. Miller.

Mr. Miller: I move that clause (b) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be struck out.

Mr. Zimmer: On a point of order, Mr. Chair: Has Mr. Kormos withdrawn his?

The Chair: Yes.

Mr. Kormos: Well, it's not a matter of withdrawing it. It becomes moot once that motion is moved. It just disappears. It's dust in the wind.

The Chair: Any discussion?

Mr. Tascona: The definition covers a number of different dogs, if you want to say that. I use the term loosely. In the definitions:

"'pit bull' includes,

"(a) a pit bull terrier,

"(b) a Staffordshire bull terrier," which is the subject of the amendment,

"(c) an American Staffordshire terrier,

"(d) an American pit bull terrier,

"(e) a member of a class of dogs that have an appearance and physical characteristics that are substantially similar to dogs referred to in any of clauses (a) to (d)."

Based on the evidence—and I think my friend Mr. Miller will comment, there was a lot of evidence given with respect to that particular dog in terms of the fact that it's one of the most popular dogs in the United Kingdom. In fact, it's a purebred dog. It is used and designed to be with children specifically. I don't have the numbers, but I don't believe there are that many dogs per se that are Staffordshire bull terriers.

That is the gist of the amendment in terms of moving that. I know my friend Mr. Kormos listened intently during the hearings too and I believe that was his intent in terms of having that exclusion. So that's what's been moved.

Mr. Miller: Through the process of these hearings, I certainly learned a lot about dogs. I was going to say my life has gone to the dogs, but I've learned a lot and I've learned a lot about this particular breed, the Staffordshire bull terrier. What I've learned is that purebred Staffordshire bull terriers are not a problem. If anything, they seem to be exemplary dogs. They are not the dogs that I

think the government is trying to target with this legislation.

I'd never seen a Staffordshire bull terrier before these hearings began. I had a constituent bring one into my constituency office to show it to me.

I heard a media interview being conducted and they kept referring to this big dog. Surely, if you're walking down the street and you see one of those pit bull dogs that the government is calling a pit bull, a big dog, you'd be afraid. Well, a Staffordshire bull terrier is a very small dog. It's 14 inches tall and 30 pounds. It's a tiny dog. There are not a lot of purebreds in the country and they have proven not to be a problem. In fact, one of the things we heard was that there hasn't been an unprovoked bite by a purebred Staffordshire bull terrier in the country, so why would we be banning these dogs?

We heard from owners. We heard from a couple—the helicopter pilot—talking about how, many years ago, when they were thinking about getting a dog, they went to an expert, because they wanted a dog that was good with kids, and the expert recommended a Staffordshire bull terrier. So for the last 15-odd years, they've had a Staffordshire bull terrier, and they said the recommendation was correct: The dog is wonderful with kids. In fact, if you remember, they had pictures of it dressed up in various costumes.

We heard how in England, the Staffordshire bull terrier is the most common terrier. There are 250,000 Staffordshire bull terriers in England. In fact, if you look at the research from Mr. Kaye, you'll note that the Staffordshire bull terrier is not one of the dogs banned in England. We heard how the Staffordshire bull terrier is the “nanny dog.” There were some articles supplied to do with the best dogs to have with your kids, and the Staffordshire bull terrier was listed as that kind of dog. We heard from a lady—I believe her name was Squibs—who has had a Staffordshire bull terrier most of her life and who was here defending the breed. For probably at least 60 years, she has had that particular dog. For many other owners, there is no reason this dog, particularly the purebred dogs, should be targeted with this legislation. They are not a threat to anyone. If anything, they are far less a threat than most dogs, so it makes no sense to target them. That is the purpose of this motion: to remove the Staffordshire bull terrier from the definition of “pit bull.”

Mr. Kormos: Let's make sure that we discuss this and a few of the subsequent amendments in the context of what the government wants to do with this legislation, especially when you take a look at government amendment number 34 in your package of amendments, which is their response to concerns around section 19. I'll speak to that amendment in due course, because, boy, is the government buying itself and its prosecutors some serious problems with that amendment. Really, gentlemen, it is.

The government clearly recognizes that there are small-p, colloquial, mongrel pit bulls, because it talks about “a pit bull terrier” without further definition. But

then it goes on to talk about dogs which are clearly other than mongrel, other than just slang-named. This means a Staffordshire bull terrier, with a capital S. That's different from just a generic terrier or bull terrier. The government talks about “American Staffordshire terrier”—capitalized “American,” capitalized “Staffordshire”—again, a very specific breed, just like the Staffordshire bull terrier is a very specific breed.

It goes further and talks about American—capital A—pit bull terrier, again, a very specific, recognized breed as compared to what we are all familiar with and what Chief Fantino and a whole lot of other people talked about. These are the illegal biker-gang dogs and the drug-dealer dogs and the street-hood dogs. So it's either a pit bull or it's a Staffordshire bull terrier; it can't be both. It seems to me that when we look at the characteristics of the Staffordshire bull terrier, the evidence being that not one of which has bitten or been reported as having bitten in Canada, the “nanny dog”—take a look at the Staffordshire bull terrier on the Web sites of the Canadian Kennel Club, the American Kennel Club and the United Kennel Club in Britain; I did. Everything we heard from the owners, the breeders and the experts is confirmed.

Take a look at your amendment to section 19. The veterinarian who is going to be called upon to define a pit bull—and the government has also amended paragraph (e): “a dog that has an appearance and physical characteristics that are substantially similar to” dogs referred to in any of the above groups. Look at what you've done: A veterinarian who identifies a dog that has the characteristics of a Staffordshire bull terrier has then made that dog a dangerous dog, and what has he or she done? When you look at the characteristics of the Staffordshire bull terrier, according to what the breed is—a child-friendly dog, a protective dog, a safe dog, a friendly dog—that's nuts, parliamentary assistant. There's an inherent and internal contradiction here. You can't have it both ways.

The physical characteristics of a Staffordshire bull terrier are of a dog that is a child-friendly dog, that rates in—what was it?—the top 10 of dogs to buy for your kid. That's not the dog we're concerned about. We're concerned about the dogs that have been attacking and mauling and killing kids and adults in Ontario.

1100

You have put your justice of the peace in an incredibly difficult situation. Look, you can't say, and I'm trying to find an analogy that isn't offensive, “Cattle include horses, chickens, reptiles, or beasts that include any of the characteristics of the slotted animals above.” I suppose you can legislate it; you can legislate anything you want. You can change the names of the days of the week, you can turn night into day and day into night, but there's a point at which a court is going to be called upon to examine the inherent contradiction in your very first amendment. This is the foundation of your act. This is “pit bull.” I think it's a very dangerous legislative course to take—very, very dangerous.

Quite frankly, I think this amendment is helpful to you, because people down the road are going to be compelled to look at this legislation, the amended Dog Owners' Liability Act, and say, "What was its purpose? Its purpose was to address dangerous and vicious dogs, specifically pit bulls, but then the government included Staffordshire bull terriers, purebred American Staffordshire bull terriers. That's the point, purebred, because it's capital A, capital S. What's going on here? We thought this bill was about vicious or dangerous dogs." You're creating confusion where confusion doesn't have to exist, and you're not being helpful to the common interest here in cleaning up bad dogs, vicious dogs, getting them off the street and out of the hands of inevitably bad owners.

We'll be supporting the amendment. Thank you, sir.

The Chair: Thank you. Questions and comments? Shall the amendment carry?

Mr. Kormos: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost. Further amendments to section 1?

Mr. Kormos: Chair, I'd ask you and committee members to refer to what's identified as amendment 5 in your bundle, because it logically should precede the other amendments, for the obvious reasons.

I move that clauses (b), (c) and (d) of the definition of "pit bull", as set out in subsection 1(2) of the bill, be struck out.

The Chair: Comments?

Mr. Kormos: Once again, what I've done is eliminate the three paragraphs, the three clauses, that deal with purebred dogs. The government has thrown purebreds in here: purebred Staffordshire bull terriers, purebred American Staffordshire terriers and purebred American pit bull terriers. Nowhere along the line did anyone say to anybody that in the pursuit of better legislation controlling vicious dogs there was an interest in the pursuit of these purebred, registered dogs with their benign characteristics. The government from day one said "pit bulls." I heard Mr. Bryant himself: "Pit bulls banned. Pit bulls banned." He said "pit bull"; he didn't say "Staffordshire terrier," he didn't say "American Staffordshire terrier" and he didn't say "American pit bull terrier." If we're dealing with pit bulls, let's deal with pit bulls. If we're dealing with the ill-bred, non-pure-breed, non-registered, non-breeder-bred, non-show-dog, biker-gang, drug-dealer—illegal biker-gang. I'd better throw in that qualification. I don't want the Welland County Motorcycle Club on my back; they're friends. Illegal biker-gang, drug-dealer, street-hood pit bull: That's the one

we're told we're talking about, so let's legislate it. And if we're legislating those mongrel, dangerous, illegal biker-gang, drug-dealer, street-hood pit bulls, then let's talk about pit bulls. That means your clause (a), "a pit bull terrier." I'll concede this to you, because you say you know what a pit bull is. You use the old "walks like a duck, quacks like a duck," blah, blah, blah; remember that one? That's an old one. That's been used in so many jury addresses, Mr. Zimmer. It's been around as long as the jury system. You know it.

Look, you say we know what pit bulls are; no problem. Well, I've told you I'm not sure, but I know what a vicious and dangerous dog is, so let's meet halfway. I'll concede that if you stick with clause (a), small-p pit bull mongrel, and then carry it on to—because you've amended clause (e)—"a dog that has an appearance and physical characteristics that are substantially similar to" that pit bull, I would suggest "demeanour" might be useful too, wouldn't it, because that's what you're talking about? You and I have neither the same physical appearance nor the same demeanour, but if one or the other of those were to be altered, people would understand, right? So maybe demeanour, because that's what you're really getting at here; you're talking about the demeanour of these animals. You said you didn't want to kill any fluffy little puppies; you just wanted to eliminate vicious, ill-bred, ill-reared pit bulls, the kind of small-p, colloquial pit bulls we all know about.

This motion is as much to protect the government and its interests as anything else. It's a concession to you; it really is. This brief moment of generosity on my part is unlikely to be repeated, but it's a concession to you. It's aid offered that I hope you don't spurn.

Mr. Miller: I would like to support Mr. Kormos in his motion to basically remove from the definition of "pit bull" "(a) a Staffordshire bull terrier, (b) an American Staffordshire terrier, (c) an American pit bull terrier."

I would just like to use some of the research done in England that notes that in their definition of "dangerous dogs" they did include the pit bull terrier, but they did not include any of those other breeds: the Staffordshire bull terrier, the American Staffordshire terrier or the American pit bull terrier.

I think, as Mr. Kormos has pointed out, the facts are clear that it is not the purebred dogs that are hurting people. It is the dogs owned by people who want a vicious dog, owned by the criminal element, as pointed out by Mr. Fantino, dogs that are being used as a weapon, but it is not the purebred dogs. So it is completely unnecessary to include them in the definition of what a pit bull is and it won't serve to protect the people of Ontario. It may give them a false sense of security but it will not, in reality, protect the people of Ontario.

Mr. Tascona: The government has sort of admitted this—and I think Peter was trying to get there—in their amendment number 13, where the government deals with an evidentiary matter where it says, "In determining whether a dog is a pit bull within the meaning of this act, a court may have regard to the breed standards estab-

lished for Staffordshire bull terriers, American Staffordshire terriers or American pit bull terriers,” which is under the definition of what they have for pit bull—covers (b), (c) and (d). Very deliberately they have excluded (a), which is the pit bull terrier, from what a court can have regard to, which is what Peter was alluding to as a mongrel, because they’re not going to be able to prove what kind of dog that is.

The government is tacitly admitting that in their motion, amendment 13. So what we’re looking at here—to be consistent, I don’t know why the Liberal government wouldn’t support this, because it really deals with the crux of the issue, which is the pit bull mongrel. That’s what was defined—I think Mr. Miller was showing me that under the UK legislation—as the pit bull terrier. So the government has admitted that in terms of how they’re going to deal with court proceedings and what leeway and direction they’re giving judges in determining whether a dog is a pit bull. They specifically say you can look at the breed standards for those dogs, whereas they’re not putting that in there for the pit bull terrier. Those are my comments on that.

1110

The Chair: Thank you. Questions, comments? Mr. Zimmer.

Mr. Zimmer: I must say to you, Mr. Kormos, that I’m very pleased—in fact, I’m delighted—that on the Hansard record you’ve now expressed your happiness to be in favour of the ban on pit bulls. Of course, we will continue to disagree on the definition of the pit bull, but I am happy to see that you’ve been brave enough to go on record in support of the pit bull ban. Thank you.

The Chair: Further questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

The Chair: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.

Further amendments to section 1: Mr. Kormos.

Mr. Kormos: I move that clauses (b) and (c) of the definition of “pit bull,” as set out in subsection 1(2) of the bill, be struck out.

The Chair: Just as a point of clarification, amendment numbers 3 and 4—

Mr. Kormos: I’m sorry. This is number 6 in your bundle.

The Chair: Number 6. Amendment numbers 3 and 4: Are they withdrawn?

Mr. Kormos: We’re getting to them. We’re on number 6. The ordering is critical that it be done this

way; otherwise, the subsequent amendment would be null.

Once again, if Mr. Zimmer read his material before he came to committee, he’d see that the New Democrats have proposed an amendment that would require all dogs other than purebred dogs kept for show or breed to be neutered or spayed. That was one of the recommendations that came from expert evidence: neutering and spaying; neutering especially in the case of male dogs of all breeds.

As a matter of fact, we heard that the very first morning in briefings from the experts from the civil service who were critical in drafting the bill. I recall closing my questions to them about the interest that was being served by neutering. It was suggested that that was as much, perhaps even more so, to control or moderate aggressive behaviour—I think that’s something that all of us could identify with, in our own right—as compared to necessarily precluding the procreation.

You’ll note that I have an amendment that I want this government to seriously consider, because what we are saying is that we should be banning all dogs not properly bred, trained and reared, end of story. The inevitable impact of the compulsory neutering and spaying of all dogs other than registered, licensed purebreds for breed or show would have as its eventual but inevitable outcome the demise—not of breeds; far from it—of the wacky stuff.

Take a look at the Toronto Star. Have you, Mr. Zimmer? Want ads. Look at the back section: dogs. First of all, you’ve got to understand that we’re not talking—when we’re talking about Staffords or American Staffords or American pit bulls, we’re talking about a thousand, two thousand bucks.

If you’re having a hot flash and you’re fanning yourself, talk to your colleague. I don’t know what you’re doing with that piece of paper in front of your face, Mr. Zimmer.

We’re talking about dogs that cost \$1,000, \$2,000, even more. Do you understand what I’m saying? Take a look at the want ads in the Toronto Star, in the dog section, and you see “Purebred, Canadian Kennel Club, etc. etc., qualified dog.” Then you see the wacky stuff, some of which is, in somebody’s mind, cute. It used to be cocker spaniels and poodles. Remember? I think they were called cockapoos. I saw some wacky stuff in the Toronto Star just last week when I was reading it before coming to committee.

Then I see things like “Rottweilers, bred bigger.” This isn’t by a legitimate breeder. These aren’t purebred, show-quality Rottweilers to the Rottweiler standard. These are the very sort of people you don’t want breeding dogs. These are the backyard breeders. These are the people who are bastardizing particular breeds of dogs and creating in any number of cases some really horrible outcomes, either dogs that suffer in their own right—hip dysplasia and things like that that become genetically encoded in a particular line or lineage of poorly bred dogs—or dogs that are more dangerous than a purebred is bred to be.

In our quest for a ban on vicious dogs—and we've always conceded that for the illegal biker gang dog, the drug dealer dog, the street hood dog, the mongrel, mean dog that colloquially is spoken of as a pit bull, among other things, go to town. But what we're saying is, don't ban legitimate breeds, in this instance Staffordshire bull terrier and American Staffordshire terrier, that do not have any of the qualities or characteristics that are of concern to the people of Ontario. In fact, by including them, by insisting and insisting on including them, by God, I look forward to witnessing the first cross-examination of a veterinarian who is subpoenaed on his certificate declaring a dog to be a pit bull. I relish the first cross-examination of that veterinarian when he or she is referred to the qualities, characteristics and demeanour of Staffordshire bull terriers or American Staffordshire terriers and has to justify how those qualities, and reference to them, assists in identifying an otherwise mongrel dog as a pit bull.

Once again, this is a gift. Don't look it in the mouth. Take it. It's not a Trojan Horse. It's yours, even without the asking. We're trying to make a weak bill somewhat better, and we're doing our best.

Mr. Miller: I support the motion that removes "a Staffordshire bull terrier" and "an American Staffordshire terrier" from the definition of a pit bull. What's really disappointing about what we've been going through with this process is that we really could bring in a new law that would make a difference. We've heard about other jurisdictions that have been very successful, like New York state and, I believe, California. We certainly heard about Calgary. Yet we are coming up with legislation that is not going to be effective.

As Mr. Kormos has pointed out, these purebred dogs, the Staffordshire bull terrier and the American Staffordshire terrier, are not the problem. They are not the vicious dogs owned by biker gangs and the criminal element that are being used as a weapon, as was stated by Chief of Police Fantino. The Staffordshire bull terrier is the nanny dog. It's known for being the nanny dog for its love of children. It's the most popular terrier in England. There are 250,000. It's a tiny little dog. So banning that or calling that a pit bull is ridiculous and it doesn't accomplish anything. I think you should support this motion and improve the bill, and drop "a Staffordshire bull terrier" and "an American Staffordshire terrier" from your definition of what a pit bull is.

You seem intent on carrying through with banning pit bulls even though you've heard very clearly that that legislation doesn't work. Look at the research on England that was provided for us: "The act is called 'An Act of Folly.' It was drawn up in days, welcomed with acclamation and relief, hurried through its stages and emerged as something neither clear nor fair." That was 1995 in England, and that's very much what we're doing here in Ontario now. If you insist on using the government majority to force this bad legislation through, I can tell you it will change in a few years, because it will be proven to be just bad legislation.

I support Mr. Kormos in his motion to remove "Staffordshire bull terrier" and "American Staffordshire terrier" from the definition of "pit bull."

1120

Interjection: Recorded vote.

The Chair: Questions and comments? Recorded vote. Shall the amendment carry?

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost. Mr. Kormos.

Mr. Kormos: This is item number 3 in your bundle of amendments.

I move that clause (c) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be struck out.

This takes us down to purebred American Staffordshire terriers, and it permits the government, if it doesn't want to eliminate both clauses (b) and (c)—well, how about just going with eliminating clause (c)? We've whittled it down to the most simplistic options here.

Once again, the argument is that nothing in the material or information received by this committee or relayed by the government suggests that there is a problem with American Staffordshire terriers—purebred, capital-A, capital-S, American Staffordshire terriers. If there's nothing wrong with them and if they aren't the target, if they aren't pit bulls—and the government says its target is rogue, outlaw biker-gang pit bulls, drug-dealer dogs, the kind of dogs that former Toronto Chief of Police Julian Fantino, now well-assetted emergency management czar of the province of Ontario and close friend of Dalton McGuinty and Greg Sorbara—intimate, I trust—told us, and I don't disbelieve him by any stretch of the imagination, are the kind of dogs that were attacking cops trying to do their duty. He didn't indicate that it was purebred American Staffordshire terriers.

Again, I understand you're going to pay a thousand or two thousand bucks for one of these, easy. I can't for the life of me think why somebody who's got to pay a thousand or two thousand bucks is going to want their dog to bite people. If I'm paying that kind of money for a dog, that dog better not bite, I'll tell you that. That dog better produce premiums.

Mr. Miller: I support this motion to remove "American Staffordshire terrier" from the definition of "pit bull," as being better than the definition of "pit bull" that the government is using. I note that in England they've had great difficulty identifying what a pit bull is. In the research provided by Mr. Kaye, it says, "British courts had great difficulty establishing the 'breed' of pit bulls, at least in part because the pit bull terrier is not recognized as a specific breed in the United Kingdom."

Certainly, what we've heard is that the purebred dogs are not the problem. They're not the dangerous dogs. If anything, we've heard that a big part of the problem of dog bites is irresponsible dog owners. I think the people who are investing a lot of money in their purebred dog also tend to invest a lot of time in things like education and training, and they tend to be the responsible dog owners. So to ban this purebred dog does not protect the public in Ontario. It does not achieve any goal other than punishing innocent dog owners. Because of that, I support this motion.

The Chair: Thank you. Further questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.

Mr. Kormos: Item number 4 in your bundle of motions:

I move that clause (d) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be struck out.

Again, my comments with respect to the last two or three amendments apply equally to this one. Clause (d) is of course the apparently purebred American pit bull terrier. The suggestion, the evidence, the irresistible conclusion was that purebred dogs, registered dogs, dogs that are bred by competent breeders, are not inherently dangerous dogs. To the contrary, they're bred to be adults within the confines of the definition of what that breed of dog is: height, colouring and so on. Similarly, with respect to temperament, a dog breeder has an interest in culling bad dogs, mean dogs, vicious dogs, unpredictable dogs from his or her breeding stock, if that's not an inappropriate word.

The Chair: Other questions or comments?

Mr. Miller: I would also like to support this motion that the American pit bull terrier not be considered to be in the definition of a pit bull terrier. As Mr. Kormos said, the breeders of purebred dogs tend to be responsible breeders. I think we heard over the last four days that backyard breeders and puppy mills are a problem, but breeders of the purebreds have a large investment. Often these dogs sell for \$1,000, and they have a lot at stake in making sure that the owners are responsible and will often go to lengths to make sure they have a responsible owner who is buying the dog. These dogs are just not the problem that this bill is trying to identify. We should be dealing with all dangerous dogs, not one specific purebred dog that is not the problem. I know we've already had the motion on doing away completely with this specific breed ban, but we heard from the evidence given by the veterinarian from Kitchener that, from the Ontario

Ministry of Health statistics from 1995-96—and we also heard that there aren't the greatest statistics province-wide—all pit bulls were actually eighth on the list of bite contact reports with the Ontario Ministry of Health, well down the list below German shepherds, Labradors, collies, huskies, Rottweilers, cocker spaniels and poodles. Removing this specific American pit bull terrier would improve this legislation, so I support Mr. Kormos.

The Chair: Further questions and comments? Shall the amendment carry?

Mr. Kormos: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.

Mr. Kormos: If people would please go to amendment 10 in your bundle.

I move that clauses (b), (c) and (d) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be struck out and the following substituted:

"(b) a Staffordshire bull terrier, except a Staffordshire bull terrier that is registered with the Canadian Kennel Club or the American Kennel Club;

"(c) an American Staffordshire terrier, except an American Staffordshire terrier that is registered with the Canadian Kennel Club or the American Kennel Club;

"(d) an American pit bull terrier, except an American pit bull terrier that is registered with the United Kennel Club or the American Dog Breeders Association,".

1130

The Chair: Discussion?

Mr. Kormos: This government has paraded out the Kitchener bylaw perpetually. I took guidance from the contents of that bylaw that's being held up by government members as the standard, as the model, as the template. I ask all of you, because you all have copies of that bylaw, to take a look at section 1 of the Kitchener bylaw:

"(t) 'Pit bull dog' means a dog of any age which can be identified as a dog of one or more of the following breeds or mixed breeds by the pound-keeper, namely:

"(i) pit bull terrier;

"(ii) American pit bull terrier;

"(iii) pit bull;

"(iv) Stafford bull terrier"—and I submit that that's a typo—"except a Staffordshire bull terrier which is registered with the American Kennel Club or the Canadian Kennel Club; or

"(v) American Staffordshire terrier, except an American Staffordshire terrier which is registered with the American Kennel Club or the Canadian Kennel Club."

I've taken the liberty of extending the logic of the exclusion of registered Staffordshire bull terriers and American Staffordshire terriers, and I've taken the freedom of applying that to American pit bulls as well. I appreciate that that may stick in the craw of some of the government members, so if indeed that is a deal breaker, just wait; I can take care of you in my next amendment.

Look, you can't have it both ways. You can't say that Kitchener is the way to go and then ignore the obvious logic from Kitchener councillors, to the extent that they exercised it, in excluding American Kennel Club or Canadian Kennel Club Staffordshires and American Staffordshires. The evidence was not only clear but, as I recall it, pretty darned overwhelming that these kennel club purebred dogs are not the dogs that should be included in your definition of a small-p pit bull. They're a very different thing. They're a distinctive thing. Folks down in Kitchener knew that.

I'm suggesting to you that this is a wise amendment to your bill, and that the logic that would compel Kitchener to apply the exclusion to Staffordshire bull terriers and American Staffordshire terriers should also be applied to American pit bull terriers registered with the United Kennel Club—that's in Great Britain, as you all know—and the American Dog Breeders Association—well, that's in America.

If you're going to protest, I anticipated quick-thinking minds on the other side saying, "But the United Kennel Club isn't very clearly defined." I say that's what regulations are for; aren't they, Mr. Zimmer? The American Dog Breeders Association: That's what regulations are for. In fact, you can by regulation expand or compress the list of associations or clubs that have, or that you wish to have, the authority to document and verify the purebred. We're not just talking about purebred—whatever purebred—we're talking about dogs that are not only purebred but bred to spec.

You could say "purebred," but it's another thing to say "legitimate dog breeders and show dog owners." We can dismiss show dog people as being a separate little club, except that they perform a valuable function in terms of maintaining the standards for a particular breed—they do—at great expense. Again, it's a net-net-net-cost hobby, no two ways about it. Nobody makes money at it. Most dog breeders don't even make money at what they do. They do it out of passion for a breed or breeds of dogs and for the animal. So we're not talking about people who are making big chunks of dough. Chair, you remember the suggestion that somehow, some of the folks who appeared before this committee were motivated by monetary self-interest. That was sad. What a cheap shot. It really was. I got to know a whole lot of these people because they kept coming day after day, at their own expense, mind you. I found out through them and through folks down in my community that, yes, people who breed dogs, by and large, good dog breeders, the ones we should be licensing and controlling, regulating—we'll get to that later on in the amendments I'm going to propose.

You've heard comments coming from both your own caucus in the form of Mike Colle—remember when he was in opposition, and his passion about puppy mills?—and from your colleague the Conservative member who expressed the same concern about puppy mills and the need to control them. This is what we're talking about here. Once again I've relied simply on your icon, the Kitchener bylaw, and applied the same logic to your bill as was clearly applied to the Kitchener bylaw.

Mr. Miller: I support this motion. As has been pointed out, the Kitchener bylaw has been talked about as having been effective, and in their specific bylaw the purebred dogs are excluded. That bylaw has been around for a while, and these dogs have not been seen to be a problem, so logically why would you ban them in the province of Ontario? All that the government would be doing would be to ban and hurt responsible dog owners who own and have these purebred dogs as members of their family. I agree that it doesn't make sense to ban these dogs from Ontario, and it will not serve the public in making them any safer, so I support this motion.

The Chair: Shall the amendment carry? Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.

Mr. Kormos: I would ask people to look at amendment number 11 in their bundle of amendments.

I move that clauses (b) and (c) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be struck out and the following substituted:

"(b) a Staffordshire bull terrier, except a Staffordshire bull terrier that is registered with the Canadian Kennel Club or the American Kennel Club,

"(c) an American Staffordshire terrier, except an American Staffordshire terrier that is registered with the Canadian Kennel Club or the American Kennel Club,".

Chair, I anticipated the results of the vote on the last amendment. So, rather than taking any liberties with the design of the Kitchener bylaw, I stayed true to its content. This amendment duplicates exactly what the Kitchener bylaw says. The Kitchener bylaw excludes Staffordshire bull terriers that are registered with the American Kennel Club or the Canadian Kennel Club and American Staffordshire terriers that are registered with the American Kennel Club or the Canadian Kennel Club.

This does the same. It doesn't bring the American pit bull—the capital-A American pit bull, a specific breed rather than some sort of colloquial term—into the realm of exclusions. Maybe this will be a little more palatable to the well-whipped government members.

Mr. Miller: I've already pointed out that I disagree with a specific-breed ban, as it's been proven to be ineffective and hasn't worked in other jurisdictions. However, this is an improvement on what the government is ramming through, and as was pointed out by the city of Kitchener when they gave testimony and is reported in the research from Mr. Kaye, Kitchener's definition of "pit bull" has worked well for approximately eight years. The province should consider using this definition, as it has proven to be clear and enforceable and has withstood the test of time. Unlike the province's definition, it excludes purebred Staffordshire bull terriers and purebred American Staffordshire terriers if they are registered with the Canadian Kennel Club or the American Kennel Club.

You can improve this legislation a little bit by passing this motion, and it makes absolutely no sense not to. I'd love to hear from the government why they wouldn't vote in favour of this motion.

The Chair: Questions and comments? Shall the amendment—

Mr. Kormos: One moment. Eight-minute recess, as per the standing orders, please.

The Chair: The committee will recess for eight minutes.

The committee recessed from 1139 to 1147.

The Chair: Let's come back to order. Shall the amendment put forth by Mr. Kormos, which would be number 11 in your package, carry?

Mr. Kormos: Recorded vote, please.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost. Mr. Kormos.

Mr. Kormos: If I may ask people to refer to amendment number 7 in the bundle.

The Chair: Number 7 in our packages. Go ahead.

Mr. Kormos: I move that clause (b) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be amended by adding, at the end, "except a Staffordshire bull terrier that is registered with the Canadian Kennel Club or the American Kennel Club."

In view of the government's lack of appetite for the amendment immediately preceding this one, I'm offering up to them, if they don't want to put both Staffordshire bull terriers and American Staffordshire terriers belonging to Canadian kennel clubs and American kennel clubs as excluded from the pit bull definition, then I say to you, gentlemen, how about just Staffordshire bull terriers, for all the same reasons and with all the same arguments made a few moments ago with respect to the earlier amendment?

The Chair: Questions and comments?

Mr. Miller: I certainly completely support this. For the life of me, I can't understand why the government wouldn't want to support this and why they don't think it would be an improvement to the bill. There's been overwhelming evidence to show that the Staffordshire bull terrier has proven not to be a threat to anyone. It's the most popular terrier in the English-speaking world. There are 250,000 of them in England, and it's not a banned dog in England. There's a relatively small number in Canada; I believe it's fewer than 1,000. There's never been a documented unprovoked bite in Canada by CKC-registered, purebred Staffordshire bull terriers. So based on that, why are you punishing these owners?

We had the helicopter pilot and his wife come in with all the information about many, many years of experience. We had many different owners come and testify as to how good these dogs are with children, and that's why the Staffordshire bull terrier is known around the world as the nanny dog, for its love of children.

There was a study done by the University of Southampton that concluded that the Staffordshire bull terrier is one of the top 10 dogs to have in your home if you have children, and the number one terrier with children.

In the opening statement by the parliamentary assistant, he said, "It's very clear what a pit bull is," and he named as part of it a Staffordshire bull terrier. In England they don't think a pit bull is a Staffordshire bull terrier. I'm sure all the owners of Staffordshire bull terriers out there would say it is not a pit bull.

For the life of me, I don't understand how the government loses face by improving the legislation, by taking a dog out that is not a threat to anyone, a dog that is 14 inches tall and 30 pounds and has been recognized around the world as not being a threat. The German government recognizes that it acted too hastily when it included the Staffordshire bull terrier in its pit bull ban, and that has now been overturned by their supreme court. Italy has 92 breeds that are banned in the country, and the Staffordshire bull terrier is not one of those 92 breeds. I don't see what the government has to lose by improving the legislation—by actually listening to all the people who came before us for four days, many of them from a great distance, many of them who stayed the whole four days—and supporting this resolution to exclude the Staffordshire bull terrier from the definition of a pit bull terrier. It will not do anything to protect the people of this province from dangerous dogs by counting them as part of the definition of a pit bull. So I support this motion put forward by Mr. Kormos.

The Chair: Thank you. Other questions and comments? Shall the amendment carry?

Mr. Kormos: Recorded vote, please.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.

Mr. Kormos: Page 8 in your bundle of amendments:

I move that clause (c) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be amended by adding, at the end, "except an American Staffordshire terrier that is registered with the Canadian Kennel Club or the American Kennel Club."

Look, Chair, I appreciate that this exercise is a little tiring, perhaps, but I've looked for rhyme or reason to the government's thought process around this bill and I haven't found any, none of those classical "if, then" formulas. So in view of the fact that the government seems to be more fascinated with throwing darts and seeing where they land, I was wondering if perhaps it was American Staffordshire terriers that were the bull's eye.

The Chair: Questions and comments?

Mr. Miller: Yes, I would certainly support this motion to moderately improve this bill by excluding the American Staffordshire terrier from the definition of a pit bull. The purebred dogs are not the problem, and this would improve the bill. For that reason, I support the motion.

The Chair: Shall the amendment carry?

Mr. Kormos: Recorded vote, please.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.

Mr. Kormos?

Mr. Kormos: Number 9 in your bundle of amendments: I move that clause (d) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be amended by adding, at the end, "except an American pit bull terrier that is registered with the United Kennel Club or the American Dog Breeders Association."

Again, I'd ask that the arguments and rationale applied to the earlier and similar amendments with respect to other breeds be applied to this as well.

The Chair: Questions and comments?

Mr. Miller: I once again support it, based on all the previous comments that we have made to do with similar motions.

The Chair: Shall the amendment carry?

Mr. Kormos: Recorded vote, please.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Qaadri, Racco, Wilkinson, Zimmer.

The Chair: I declare the amendment lost.

A government motion, Mr. Zimmer: number 12.

Mr. Zimmer: I move that clause (e) of the definition of "pit bull," as set out in subsection 1(2) of the bill, be struck out and the following substituted:

"(e) a dog that has an appearance and physical characteristics that are substantially similar to those of dogs referred to in any of clauses (a) to (d); ('pit bull')".

The proposed amendment will remove the reference to "a class of dogs" and substitute it with the simple term "a dog." It recognizes that clause (e) is an attempt to capture dogs that substantially conform to the characteristics of the pit bull breeds. This amendment and, indeed, the next one, are aimed at clarifying the definition of "pit bull" with respect to the issue of identification.

The Chair: Questions and comments?

Mr. Kormos: I'm curious about this amendment because it seems to me that, in the bill as presented, you're talking about a dog that the prosecutor would want to be found to be a pit bull. If one is relying upon clause (e), being not just a dog, as in the amendment, but a member of a class of dogs, I'm asking the government, are you lowering the standard? Are you lightening or lessening the test for what constitutes a pit bull in this clause (e) so as to weaken or dilute the definition?

The Chair: Questions or comments?

Mr. Kormos: If I may, that was a question. It's normal to put questions during the course of clause-by-clause and to expect answers from somebody. We had an entourage of high-priced help here just moments ago.

Mr. Tascona: Along those lines, I would follow up on Mr. Kormos. I would agree with Mr. Kormos, if I'm on the same wavelength. I think the parliamentary assistant or someone who can assist him has made a major change with respect to the definition by changing "a member of a class of dogs" to just "a dog." That's a significant change, and I'd like to know why the deletion. I don't really think I've got an answer from Mr. Zimmer. Are you going to answer?

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The Chair: Questions and comments?

Mr. Kormos: Chair, is the government going to stand mute? We're entitled to put questions and comments; I submit we're entitled to have them answered. We need your direction. I've asked the government, is the purpose of this amendment to dilute the definition so as to embrace a broader number of dogs so as to make it easier to make a dog a pit bull? We had over half a million dollars a year worth of high-priced help in this room just moments ago. Surely they weren't here on their coffee break; they were here as resources, amongst other things, for Mr. Zimmer and/or the committee. I don't expect his political staff to be made available to us, but I do expect civil servants to be made available to us to answer the questions that we're putting during the course of clause-by-clause.

Mr. Zimmer: Just let me repeat what I said when I spoke to the motion: The purpose of the amendment and indeed the next one will have the effect of clarifying the

definition of "pit bull" with respect to the issue of identification.

Mr. John Wilkinson (Perth—Middlesex): On a point of order, Mr. Chair: There was a select committee agreement that we would be breaking at 12 so we could stay on time, and that we would resume at 1 o'clock. Is that your understanding, Chair?

The Chair: That is correct. Is it the will of the committee to dispose of this amendment before recessing?

Mr. Kormos: No, sir.

Mr. Tascona: No.

Mr. Kormos: This is a very important little bit of material here; it's critical.

The Chair: Questions and comments on this particular amendment?

Mr. Tascona: Well, I don't know how to comment on this. The parliamentary assistant says it assists in the identification of a pit bull and, to be fair to the parliamentary assistant, there is no doubt that all the Liberal amendments that have been put forth are aimed at dealing with the issue of identifying and making it easier—or, if one could put it another way, making it more difficult—for the person in charge to deal with this particular issue.

Government motion 13 deals with determining whether a dog is a pit bull. It goes into specific breed standards. In their other motion, it has also moved into dealing with the findings of fact. Number 17 says, "Findings of fact in a proceeding ... shall be made on the balance of probabilities," which is a civil standard. Then it goes on in their amendment 21 to insert onus of proof on pit bulls. They've moved it from 19 and tried to hide it under section 4, that the onus is still on the owner with respect to whether a dog is a pit bull. Then it goes on under section 19, which I believe is government motion number 34, to come up with documentation from veterinarians to deal with the identification of a pit bull.

So everything is directed toward making sure that the standard—and I think I share the view of Mr. Kormos—is lowered with respect to what could be determined to be a pit bull. Now, this bill was drafted specifically to deal with this issue. I would have thought that it was drafted initially to deal with the issue that's before us today. But they've made a fairly fundamental change because they've defined it as a class of dogs, and they have identified specific dogs. I guess in legal terminology, when you're dealing with a judge, he says, "I'm trying to cover all the bases." That's what this is; they're covering all the bases, so if you don't fall within "pit bull terrier," because we don't know what that is and they don't know either, then they have three specific dogs, and then they go in with clause (e): "We're going to cover all the bases, so if we get anything that has the appearance and physical characteristics of the dogs referred to above"—and we really don't know what a pit bull terrier is—"then, basically, it's a pit bull." Then you have the reverse-onus provision.

That's really what this is dealing with. I think that if it assists in the identification of what a pit bull is, to be fair, that's really a stretch in terms of what we're dealing with

here. They've really put it in the hands of a judge to make a lot of subjective decisions by the way they've changed a lot of the evidentiary and fact-finding procedures in their amendments.

Mr. Kormos: I want to point out that perhaps the wise observation was the one made by Mr. Wilkinson as to the time and his effort as a government member to effect a lunchtime recess, perhaps with a view to resolving what is very soon going to become a serious impasse.

In 17 years, almost 18, of participating in committees, this is the first time during the course of clause-by-clause that I've ever witnessed the failure of the government to put forward a civil servant, a legislative drafter, to assist the committee in its understanding of legislation that's before it or an amendment. During the course of years of committees sitting in this Parliament, the parliamentary assistant has made himself available, understanding that the parliamentary assistant can't be expected always to understand all the minutiae, but that's why staff are here.

Before the eight-minute recess, before the government started introducing its amendments, this room was just crawling with high-priced civil servants who, in the normal course of committees' functioning, would be sitting at this table responding to questions like the questions that are being put now.

Mr. Zimmer, this has been, notwithstanding an adversarial process, one which has moved along, in my view, within a reasonable period of time today. I want to know whether the government is going to put people at the table who can answer our questions about this, and perhaps other amendments that you're putting forward, or not. Quite frankly, if I can't have that resource available to me, I'll be damned if I will be forced into voting for legislation or amendments to legislation about which this committee doesn't have adequate information.

Clearly, the parliamentary assistant doesn't know the answers, and that's fine. His script was rather limited on this one, and that's fine. I have no quarrel with that, but I expect those same civil servants who were keeping seats warm here 20 minutes ago to be made available now. Quite frankly, I am concerned about what I presume to be the parliamentary assistant's interference with the clear line between the civil servants and political staff.

I'll ask Mr. Zimmer, are there any civil servants from the ministry in this room currently?

The Chair: Please direct your comments to the Chair.

Mr. Kormos: Go ahead.

The Chair: As the committee appears to—

Mr. Kormos: Oh, no, wait a minute, Chair. Either Mr. Zimmer wants to answer that or he doesn't, but it behooves him to speak up and say, "I don't want to answer that" or "I will answer it and here's the answer."

Mr. Zimmer: I'm a member of the committee, not a witness.

Mr. Kormos: You're a parliamentary assistant. You're paid the big bucks, Mr. Zimmer. If you can't stand the heat, get out of the kitchen.

The Chair: As the Chair cannot speak for any member of the committee, it does note that we are past the

scheduled time for recess and this matter will remain in discussion when we resume. This committee stands in recess until 1 o'clock.

Mr. Kormos: Thank you, Chair.

The committee recessed from 1208 to 1300.

The Chair: Let's come back to order, please. Thank you for returning from our lunch recess. We're still considering page 12 in our package, the government motion put forth by Mr. Zimmer regarding clause (1)(2)(e).

Mr. Zimmer: Mr. Kormos has some questions to ask counsel. I have Mr. John Twohig. Abi Lewis, you will recall, gave the technical presentation at the front end of this, and I also of course remind you that legislative counsel is with us today too.

Mr. Kormos: I will not call upon legislative counsel to do the job that these people do; nor will we call upon them to do the job that she does. Right, legislative counsel?

Ms. Mariam Leitman: That's right.

The Chair: Be that as it may, Mr Kormos.

Mr. Kormos: OK. We're looking at the government amendment identified as number 12.

The Chair: Number 12 in your package, referring to subsection 1(2) of the bill.

Mr. Kormos: That's clause (e). We know what words are being deleted. You're deleting, and please correct me if I'm wrong, "that belongs to a class of" before "and." The specific question is, what does this amendment do that the existing clause (e) doesn't do in the bill?

Mr. Abi Lewis: To answer Mr. Kormos, clause (e), as we know, is a basket clause that is really aimed at capturing crossbreeds. What we are striving to do is simply to strive for simplicity, which is in consonance with well-established principles of statutory interpretation.

If we read that particular subsection 1(2) and clauses (a), (b), (c), (d) and (e), it's obvious that we are referring to a dog, and the issue about a class is a reference to the physical characteristics that are essentially similar to the enumerated clauses (a) to (d). Obviously, the proposed motion does make it simpler in terms of the fact that we are talking about a dog and not any artificial class of dogs. It does clarify what the legislative intent is all about, which is a reference to a dog in consonance with clauses (a), (b), (c) and (d).

Mr. Kormos: If I heard you correctly, I believe the operative word is "simpler."

Mr. Lewis: Yes.

Mr. Kormos: So this amendment creates a lower hurdle, if you will, to overcome in the course of defining a dog as a pit bull.

Mr. Lewis: I wouldn't say that it creates a lower hurdle, because the issue of whether or not, to use your own words, the proposed motion will weaken or strengthen the definition I think is a matter of conjecture. It's a matter of how you try to describe what the legislative intent is. What we have striven to do, as a result of the hearing, is to make sure that clause (e) is clarified

to the extent of making meaning when you read it in consonance with the second motion that Mr. Zimmer is about to propose.

Mr. Kormos: Gotcha. But really smart and experienced people drafted the bill. This isn't a casual phrase, "a member of a class of dogs," and I think I understand what that means as a test for a dog to be defined as a pit bull. I said you reduced the height of the hurdle. You eliminated one of the tests, didn't you, by eliminating the requirement that it be a member of a class of dogs?

Mr. John Twohig: It depends on what you think is a class. A class could be populated by one dog. The words are superfluous.

Mr. Kormos: OK. Was there anything that came up in the course of the committee hearings that prompted the amendment? Is this amendment a response to anything in the committee hearings?

Mr. Twohig: Nothing specifically that I recall.

Mr. Kormos: It was just a reflection on clause (e)?

Mr. Lewis: Nothing specific, but at the same time during the hearings we've had deputations from various people about the fact that when you talk about a pit bull—I mean "pit bull" is a generic term. In essence, the proposed motion is simply meant to capture the reality that we are talking about a dog that conforms to the characteristics listed in (a) to (d).

Mr. Kormos: One other question, and I'm hoping it's my last to you folks on this issue: You talk about appearance and physical characteristics, and at least to me those overlap, because physical characteristics are both external and internal. So at least the external physical characteristics are part and parcel of appearance. Why was the characteristic of temperament or demeanour not included?

Again, I appreciate that in the original bill you didn't include it, but so much of everything we heard from everybody on both sides, if I can put it that way, of this issue talked very much about temperament and demeanour of an animal in addition to the physical characteristics and appearance. So why as legislative drafters, either in the first instance, but certainly after hearing everything you heard and read during the course of these committee hearings, would you not as an amendment have said, "Hey, we should also be amending that to include temperament and/or demeanour?"

Mr. Twohig: Maybe I'll take a crack at this first, Mr. Kormos, and then Abi can add anything he wants.

I just don't think we've ever seen those words used in any of the other legislation that we've looked at. Other bylaws, other state laws etc. always use this type of terminology, and that was the terminology we borrowed.

Mr. Kormos: So it's not a matter, then, of not being aware of the temperament or demeanour issue, but you regarded it as superfluous?

Mr. Twohig: I guess we've just never seen it, and the cases we found never really examine that issue. It tended to concentrate on these types of words.

Mr. Kormos: Now that we're speaking of other legislation, clearly one of the reference points for the ministry was the Kitchener bylaw. Is that fair?

Mr. Twohig: One of them, yes.

Mr. Kormos: Just in this area of reference to other legislation, it excluded Staffordshire bull terriers that are registered with the American or Canadian Kennel Clubs and American Staffordshire terriers that are registered with the American or Canadian Kennel Clubs. In other words, it said, "Staffordshire bull terriers except ones that are registered." This being the reference point that it was, why did you not contain in your legislation, around this whole section of definition, that exception as well?

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Mr. Lewis: The simple answer to that is that Bill 132 builds upon and improves on the Kitchener bylaw. In this sense, while it may be the starting point in terms of looking at what the regulatory framework should be in terms of a ban, we were not limited only to Kitchener. At the same time, we looked at what was taking place in other places, such as Winnipeg.

Mr. Kormos: You looked at Kitchener and saw those two exceptions, those two exclusions, right? Of course you did, didn't you?

Mr. Lewis: Oh, yes.

Mr. Kormos: Do you consider them flaws in the Kitchener legislation, in the Kitchener bylaw?

Mr. Lewis: Well, I believe that in any legislative framework, usually there are policy objectives and considerations that go into play. All I can say is that we, as policy advisers, consider all the issues at play before the government made a decision.

Mr. Kormos: This is helpful, because I have to know—and I appreciate that you're legislative drafters. You're many other things than that, but in the context of what we're doing right now, you're the drafters of the legislation?

Mr. Lewis: Well, the legislative counsel usually drafts.

Mr. Kormos: OK, you're the legal designers? Granted, the office of legislative counsel does the final draft, but you design that legislation, and you designed this legislation.

Mr. Twohig: That's fair.

Mr. Lewis: Yes.

Mr. Kormos: Specifically, then, in your design of this legislation, you omitted the Kitchener exceptions of those two breeds: Staffordshire bull terrier and American Staffordshire terrier, registered?

Mr. Lewis: I wouldn't use the word "omission." I would say that, definitely, the decision-makers considered all options for the present Bill 132.

Mr. Kormos: I understand. I by no means want to be unfair and I don't want to overly belabour the point, but for me, this is important. I hope I'm on the right track, because you're saying this legislation, Bill 132, is regarded by you as an improvement on all of the other models that are out there. In other words, you took all the models, including the Kitchener bylaw, and you didn't have to necessarily follow the Kitchener bylaw to the letter, because you wanted to improve on it. Am I correct in understanding that?

Mr. Lewis: And improving on it, considering the policy objectives of the government.

Mr. Kormos: OK. Let's still, then, get to the exceptions in the Kitchener bylaw for these two purebred breeds. They aren't included in Bill 132. I understand that. In the design that you submitted to legislative counsel, it's obvious that you very specifically did not include—if I can call them—the Kitchener exceptions.

Mr. Twohig: Mr. Kormos, it's not us who are giving the instructions. We put the options to government and government made the decision.

Mr. Kormos: OK. Quite right. So what you're telling me, then, is this was a policy decision and not a legal decision?

Mr. Lewis: Well, not to belabour the point, any legal decision does have a sort of policy underpinning, and sometimes it's not that you can really compartmentalize them in terms of—I see the point you're trying to make in terms of analysis, but, really, our role is simply to provide the government with the information necessary to make an informed decision, and I think that's what we've done.

Mr. Kormos: Yes, of course. Just like you give the government advice as lawyers, you give them advice as lawyers based on the effectiveness of the legislation, the enforceability of it, the legality of it, the constitutionality of it. Is that the sort of thing you do? You do that as a part of your job, don't you?

Mr. Twohig: Yes, we do.

Mr. Kormos: Of course. It would be improper for you to tell me what advice you gave the government or the ministry, wouldn't it?

Mr. Twohig: Yes.

Mr. Kormos: But did you give them advice about the inclusion or non-inclusion of the Kitchener exception clauses? Did you give them advice about that?

Mr. Twohig: Even the fact of giving advice I think may be disclosing solicitor-client privilege.

Mr. Kormos: OK. As a lawyer, do you see the exceptions contained in the Kitchener bylaw making that bylaw, with respect to those two very restricted areas, inferior to Bill 132? Do they detract from the goal? Because the goal is the same: to ban pit bulls.

Mr. Lewis: Mr. Kormos, I think what you are trying to ask us to do is to pronounce a judgment on what we have done in relation to the government. We have provided the information that has enabled the government to make an informed decision on Bill 132, and then Bill 132, in my own humble opinion, should stand on its record.

Mr. Kormos: All right. When talking very specifically about the Kitchener exceptions, it's you who told me about Bill 132 being an improvement on the existing legislation. I guess that's all I was asking. Does the omission or the non-inclusion of exception clauses for these two breeds of dogs that Kitchener has—does that make Bill 132 an improvement on the—

Mr. Zimmer: Mr. Kormos—

Mr. Kormos: No, let me finish the question first. I don't interrupt you.

Mr. Zimmer: You're going too far. They've said that they've provided advice to the government, they've provided options. It was the government's political decision to choose among a variety of options. It's not up to legal counsel to ask any further—

Mr. Kormos: Chair, if I may, I'm not quarrelling with the fact that these two gentlemen, in the context of what we're talking about now, merely give advice, and I'm not asking for the advice that they give. But these are two very experienced lawyers who are smart and capable, who have been around legislation and watched it grow and sometimes crash, but watched it grow, watched it soar, watched it crash—

The Chair: Can you clarify for the Chair what point you're discussing?

Mr. Kormos: I want to know from them—because they're civil servants, available to this committee. I can't ask legislative counsel the questions I'm asking these people, because it's not her job, in a sense, to give me advice around the legal implications etc. of this particular bill. It is, however, within the role of these gentlemen. We went through this, remember, Mr. Zimmer? It is within their role.

They're the ones who said this Bill 132 was an improvement on the legislation that was out there floating around. They made the general observation, so let's break it down. Let's focus in on this definition section. They expressed an opinion saying this was an improvement. Far be it for me to dispute that. I want to know whether they are arguing, whether they are putting forward the position that the omission of the two exceptions is an improvement.

Mr. Zimmer: Mr. Kormos, it was the government that put forward the legislation, and we did that after considering evidence, including legal advice from our counsel. The decision about what to put forward is a political decision, and I don't think it's proper for you to ask them to comment on what they think of the political decision that was made. They provided legal advice and options. We did the choosing and we brought the legislation forward.

Mr. Kormos: Well, gentlemen, I think the parliamentary assistant has just told you to scratch that one. Sometimes you've just got to take a pass, and that's what he is saying. So there I am, left frustrated, left without the benefit of the wise counsel of these two counsel. But I suspect the parliamentary assistant's interventions speak far louder and more eloquently than anything these gentlemen would have said were it not for his intervention.

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The Chair: Thank you. Are there further questions and comments?

Mr. Kormos: No, sir. Mr. Tascona may have some.

Mr. Tascona: I appreciate your being here. I just want to follow up, if I could. In the drafting of this, I guess

there was some difficulty with the terminology, "a member of a class of dogs." Is that correct?

Mr. Twohig: I don't know that it's a problem. It's just that it's superfluous. It's not necessary.

Mr. Tascona: Why was it drafted that way in the first place if it was not necessary?

Mr. Twohig: We're not perfect.

Mr. Tascona: You're not perfect? Oh, OK.

The Chair: Further questions and comments?

Mr. Tascona: Mr. Chairman, I'm just dealing with the situation here. So you say it's superfluous in the sense of a dog—how is it superfluous? The language is totally different. To me, it's not superfluous. I think there's an intent there in terms of how they were trying to deal with a particular class of dog because they categorize, in the definition, certain types of dogs. If you're saying a class of dog is meant to cover all dogs—is that what you're saying to me now? That was the original intent, to cover all dogs, "a class of dogs"? Because that's what will happen now: All dogs will be covered.

Mr. Twohig: I don't think it was ever meant to cover all dogs. It was meant to cover crossbreeds that had the characteristics of the dogs listed in (a) through (d).

Mr. Tascona: That was the intent, but it was never drafted that way. It was drafted as "a class of dogs."

Mr. Twohig: I don't have the words in front of me, but I think perhaps the Winnipeg bylaw used that expression. On reflection, it doesn't—

Mr. Tascona: You may have taken it from the Winnipeg bylaw—"a class of dogs"?

Mr. Twohig: Yes, I think we saw it somewhere. But I don't know that it adds anything.

Mr. Tascona: Obviously, there was a source for it and that's what I'm trying to get at. If it was the Winnipeg bylaw—we had the Kitchener bylaw. I'm very curious where that language was taken from.

Mr. Twohig: Unfortunately, I don't have the Winnipeg bylaw here in front of me but I think that's where the words may have come from.

Mr. Lewis: If I may add, this particular motion simply demonstrates what we talked about: an improvement, whether it's a Kitchener bylaw or a Winnipeg bylaw, to clarify that what we are really referring to is a dog that has those characteristics and appearance in reference to clauses (a) through (d). It's really meant to be a clarification. It doesn't have, in my opinion, the kind of substantive connotation that one may link to it.

Mr. Tascona: I understand that and I can accept that, but it's just the source I'm interested in. If you're saying it may have come out of the Winnipeg bylaw, is it possible for you to provide to us where that particular drafting language came from initially?

Mr. Twohig: We can try and get it for you, sure.

Mr. Tascona: I would appreciate that, because that would be helpful. I have no further questions or comments at this point.

The Chair: Further questions and comments?

Mr. Kormos: Thank you, gentlemen.

The Chair: Shall the amendment carry?

Mr. Kormos: Recorded vote, please.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare this amendment carried.
Further amendments?

Mr. Miller: Are we at 12A now?

The Chair: I think we are at 12A. Would that be yours, Mr. Miller?

Mr. Miller: I move that the definition of “pit bull,” as set out in subsection 1(2) of the bill, be amended by adding the following closing flush after clause (e):

“but, despite clauses (a) to (e), does not include any dog that is registered as a purebred dog by the Canadian Kennel Club.”

In explanation, the Canadian Kennel Club is the organization that defines breeds in Canada. As we’ve already heard in these proceedings, a pit bull is not a breed, but it makes sense to exclude the purebred dogs that are registered by the Canadian Kennel Club. As I said, the Canadian Kennel Club is the organization that determines what a breed is in the country.

The government has already voted down the motions to drop the breed-specific part of the legislation that we were trying to get passed, but I ask the government members to not make a sham of the four days of public hearings we’ve had, all the experts and individuals who have come before this committee and given testimony. You just have to refer back to the research done by the research department to see all the points that have been made. Why don’t we make the best law possible?

This is very much along the lines of what Kitchener has done as well, excluding purebred dogs. Purebred dog owners are not the problem. This motion would improve the bill. My feeling is we should not penalize responsible owners of purebred dogs, and this motion would use the authority that determines what a purebred dog is in Canada—the Canadian Kennel Club—and exclude those purebred dogs from this definition of pit bull.

The Chair: Questions and comments?

Mr. Kormos: I support this amendment. The goal here, surely everybody’s, is to focus as many resources in as efficient a way as possible on dealing with vicious and dangerous dogs. I’ve said it before and I’ll say it again: The breed-specific ban will result in inappropriate expenditure of those resources and exhausting of those resources focusing on the breed, to the detriment of identifying and dealing with vicious dogs that may not be of that breed.

The committee heard and read frequent references to what it means for a dog to be a purebred dog in accordance with the Canadian Kennel Club or the American Kennel Club or the United Kennel Club.

We also heard of no attacks by purebred anything. If anything, what we heard was of attacks by dogs that were misidentified as pit bulls or that were difficult to clearly identify as pit bulls. That’s not to say, whatever these pit bulls are, that some of them weren’t involved—I’m confident that some were involved—in some of these vicious attacks.

I’m concerned. I said this in our submissions to the committee when the Attorney General was here last week. I’m concerned because we’ve learned that there is virtually no enforcement of the Dog Owners’ Liability Act as it now stands—victim after victim after victim mauled by dog after dog, vicious and dangerous dog after dog of any number of breeds, and no court proceedings being initiated. That implies that there are scarce resources. Mr. Kaye gave us a two-page piece on the shortage of justices of the peace—it is a notorious situation here in the province of Ontario—and about increasing waits for court time.

We heard from animal control people, amongst others, about the burden of impounding any number of dogs for periods as long as six to seven months, those pounds inevitably being maintained by municipalities, which are going through their well-publicized budget exercises right now.

I suggest to the committee that the screening and vetting process of the Canadian Kennel Club and its counterparts, the American Kennel Club and the United Kennel Club, and the legislated role they perform, is precisely the sort of thing this government, this Parliament, should be relying upon to assist it in focusing resources where they belong: on those vicious and dangerous dogs.

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The Chair: Further questions and comments? Shall the amendment carry?

Mr. Kormos: Recorded vote, please.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.
Mr. Zimmer?

Mr. Zimmer: Number 13: I move that section 1 of the bill be amended by adding the following subsection:

“(2.1) Section 1 of the act is amended by adding the following subsection:

“Same

“(2) In determining whether a dog is a pit bull within the meaning of this act, a court may have regard to the breed standards established for Staffordshire bull terriers, American Staffordshire terriers or American pit bull terriers by the Canadian Kennel Club, the United Kennel

Club, the American Kennel Club or the American Dog Breeders Association.”

This proposed amendment would clarify the objective standards that are to be used in identifying pit bulls. The organizations named in the amendment all keep breed specifications for the breeds identified in the definition of pit bull. Reference to the standards of these organizations will help to ensure that only those dogs that fit into the pit bull class will be caught.

The Chair: Questions and comments?

Mr. Kormos: Yes, a question: Does this amendment do anything? That is to say, why wouldn't a court be able to refer to the breed standards created by those organizations? You're suggesting that this amendment somehow opens a new door for a court and I'm saying to you that I don't think so. This amendment does nothing because, heck, the court can consider any evidence it considers relevant, I think. Have I got that right? The court can consider any evidence it considers relevant. So I put to the parliamentary assistant or to the ministry counsel the question: How does this amendment create any new authority, power etc. that the court wouldn't already have?

Mr. Lewis: If we consider the language of the proposed section, there is no doubt that it's inviting the court to make a determination based on the breed standards of the four organizations. In my own opinion, it's an interpretive guide to the court in determining what constitutes a pit bull.

Mr. Kormos: The word, interestingly, is “may,” and I appreciate that. By this legislation, is the government endorsing as credible evidence, as gospel, the standards that are published by these various organizations? Is the government branding them as authoritative?

Mr. Lewis: If we consider the Canadian Kennel Club, under the federal legislation, the Canadian Kennel Club is recognized as a dog registry, and the same thing with the other three American dog registries. The proposed motion is simply to reflect what has been said about the fact that the breed standards of these organizations are relevant to what determines what constitutes a pit bull.

Mr. Kormos: Does this amendment still leave the door open for a court to decline to consider or receive as evidence the standards for these breeds established by the respective organizations in the amendment?

Mr. Lewis: The key word used is “may,” and “may” is really permissive. So it's left to the discretion of the court to decide whether or not in a particular case—in other words, the court will have to make its own determination as to whether or not to consider the breed standards of those organizations in determining a particular case before it.

Mr. Kormos: So a cranky JP, or an incompetent one whose political patronage appointment reeks and reels, could say, “I don't care what the Canadian Kennel Club says. I think this is a pit bull”?

Mr. Lewis: In my own opinion, the statutory provision is based on the court doing what is considered to be objective. So I really don't have any comment

about the behaviour of JPs, other than the fact that they are supposed to be the guardians of the administration of justice in this province.

Mr. Kormos: Fair enough, sir. I suspect I have more experience with cranky JPs who are political appointments than you probably do.

Mr. Tascona: The way this is drafted, it says “a court may have regard,” so it's giving the court discretion to have regard; do you agree?

Mr. Lewis: Yes. “May” simply denotes discretion.

Mr. Tascona: OK. Why is this particular provision silent on a pit bull terrier, which is clause (a) of the definition? It doesn't deal with pit bull terrier. Why have you left that out?

Mr. Lewis: The breed standards that we know of recognize the dogs that have been listed in the proposed section.

Mr. Tascona: So there are no breed standards for (a) that you're aware of?

Mr. Lewis: We have only dealt with the four known dog registries that have been determined to be the policy reference in terms of analyzing whether a particular dog will constitute a pit bull.

Mr. Tascona: No, no, you've only dealt with three. You're dealing with (b), (c) and (d) in this amendment. You're not dealing with (a), which is the pit bull terrier.

Mr. Lewis: Correct. You're right. But what I'm saying is that—

Mr. Tascona: My question is, why? Why have you excluded it?

Mr. Lewis: It's been excluded because, to the best of my knowledge, those organizations don't have a breed standard that we can reference.

Mr. Tascona: So in other words, you don't have any evidence or any information as to what a pit bull terrier is; that's what you're saying.

Mr. Lewis: No. I think we need to consider what is the objective of this particular statutory provision. As I've said, it's supposed to be an interpretive guide for the court to come to a conclusion as to what constitutes a pit bull. Again, the key point is that it's an interpretative guide.

Mr. Tascona: I recognize that, but there are four particular classes of dogs that are mentioned in this particular definition. One of them is a pit bull terrier, and you've excluded that from what the court can consider in its discretion in determining and identifying what a pit bull is. I've asked you why, but I put to you that the reason why you've excluded pit bull terriers is because you don't really know what they are.

Mr. Lewis: Based on the literature that we have, we do know that a pit bull is what we have defined it to be in Bill 132.

Mr. Tascona: Yes, I know, but what is “(a) a pit bull terrier”? What is a pit bull terrier?

Mr. Lewis: The basket clause does indicate that a pit bull terrier—

Mr. Tascona: That's not the basket clause; (e) is the basket clause; (a) is identified as a pit bull terrier, which

you've excluded from the court's discretion for considering standards. You don't have a standard for a pit bull terrier because you don't know what it is. Why don't you just agree? Do you know what it is? Do you know what a pit bull terrier is?

1340

Mr. Lewis: A pit bull terrier, in my own opinion, is what is in the legislation—

Interjection.

Mr. Zimmer: I think, in fairness, one ought to let the witness answer the question when he launches into an answer.

Mr. Kormos: Gosh, why didn't you let them answer my questions?

Mr. Tascona: Continue. I'm dealing with clause (a). I'm not dealing with the basket (e). I'm dealing with (a), which is a pit bull terrier, which is an identified class of dog like (b), (c) and (d). You've put (b), (c) and (d) under this amendment as saying you can consider the breed standards for those dogs. I'm saying to you, you don't have any breed standards for (a) because you don't know what it is.

Mr. Lewis: Those standards were put in there, in my own opinion, based on the depositions before this committee.

Mr. Tascona: So you don't have any data whatsoever in terms of what a breed is for clause (a), do you? That's why it's exempted; correct? I'm not trying to trick you. That's the obvious answer.

Mr. Lewis: I'm not a dog expert. Based on the information we have, we have crafted legislation that has captured all the essential elements of the statutory framework that we have relating to enforcement—

Mr. Tascona: But then you've gone ahead and put a guidance directive in your legislation for judges, saying, "You may consider for the (b), (c) and (d) type of dogs the standards." But you don't have that for (a) and I'm just putting to you that's because you don't have any evidence on that, do you?

Mr. Lewis: It's obvious that we don't have it for (a), but in terms of whether we have evidence—

Mr. Tascona: You've answered the question; I accept that.

My next point is, under section 19, your amended one, you've got a provision in there to be able to receive veterinary evidence—OK, receivable as evidence—without proof of signature and without proof that the signature is a member of the college, which I'll deal with later.

You've got a specific procedure in there that you can get evidence in to help you identify what a pit bull is, but here you don't have that type of procedure. I'm asking you, how are you going to be able to get this evidence in on breed standards? Is it going to be in the evidence part of the case or is it going to be in the argument part of the case? How are you going to get this evidence in? Have you thought about that?

Mr. Lewis: Before the motion was made, we gave thought to what it is supposed to achieve. In my own

opinion as a lawyer, the word "evidence" is a loaded term. I think it's very difficult to know what you mean by "evidence." If you are saying that these three organizations don't have standards, then—

Mr. Tascona: Come on, come on. You addressed it under section 19 very clearly. You've put in a specific provision. You put your mind to it: "Here's how we're going to put in veterinary medicine evidence to identify a pit bull." You addressed that issue. All I'm saying to you is, and to assist us here—because this is going to probably be a very contentious issue with respect to the courts. People are going to say, "OK, here I have the breed standards for this particular type of dog. I got it off the Internet." It may not be signed. It may just be the breed standards for this type of dog. I'm asking you, how come you didn't address your mind in terms of trying to allow that in as evidence like you did for veterinary evidence?

Mr. Lewis: The simple answer, in my own respectful opinion, is that it is an interpretive guide and the language we have used is similar to interpretive provisions in other pieces of legislation in terms of inviting the court to determine what to do in a particular circumstance.

Mr. Tascona: I think what you've done is, you've put in a major hurdle with respect to trying to get that type of evidence in. You've given a court the discretion, but you haven't put in a method for the parties to be able to get that in, because that is a key piece of evidence in terms of identifying what a pit bull is, as it is for section 19, your changes.

I'm just putting to you that I think you could have put a little bit more thought into it. I think you've been playing to the hearings in a little bit of a way, to give them some discretion, which they can use or not use, with respect to the breed standards. You've put a lot more thought into it in terms of how you can make sure you get that evidence in for a vet as opposed to the breed standards for these particular dogs.

Those are all the comments I have.

The Chair: Mr. Kormos?

Mr. Kormos: I have no questions.

Chair, I move that government amendment number 13, amending subsection 1(2.1), be amended by deleting the word "may" and replacing it with the word "shall."

The Chair: Mr. Kormos, do you want to speak to that motion?

Mr. Kormos: Mr. Tascona, of course, has hit the nail on the head. As far as the Canadian Kennel Club, the United Kennel Club, the American Kennel Club and the American Dog Breeders Association are concerned, there's no such breed of dog as a pit bull, which of course makes it impossible for them to be called upon to be referred to in terms of a standard.

But what concerns me here is the word "may," because with the word "may," this is nothing more than window dressing. Of course, a court may consider what authoritative and legislative bodies like the Canadian Kennel Club, the American Kennel Club, the United Kennel Club and—I can't speak for the American Dog

Breeders Association. I don't know whether it's legislated. But of course a court can receive evidence from these bodies.

My concern is that with this amendment, it's clear, because the government very specifically chose "may," that a court can also decline to receive and consider evidence from these bodies. Come on, let's make sure that the law is applied fairly and with a modicum of predictability. If we are being told by the government—and I'm with them on this—that these bodies, the Canadian Kennel Club etc., are authoritative bodies, that their expertise speaks for itself, that they can be counted upon, that they are the authority for determining what constitutes a particular breed or not a breed, I'm with them.

You heard my references to these organizations in amendments that I put to the committee before. But don't play games, I say to the government, by making it discretionary. What this means is that a court—should a party to litigation around this legislation, whether in the pursuit of provincial offences or otherwise—may receive and consider as evidence the breed standard by the Canadian Kennel Club or it may not. You're either endorsing these breed standards or you're not.

I put it to the government that they're trying to have it both ways. This is the ultimate in sucking and blowing at the same time. You want to say, "Oh, yeah," because you want to appear to be benign to any number of dog people, if I can call them that, "we're recognizing the Canadian Kennel Club, but maybe we're not." I say what's good for the goose is good for the gander. Let's say that in proceedings a court "shall"—in other words, we're accepting as authority the breed standards by these organizations because that's all there is.

Mr. Tascona made reference to the veterinarian, and we're going to talk about that, I think, with some intensity when we get to that amendment, section 19, but surely the veterinarian has no other standards to use in determining whether a dog is a member of a particular breed than the breed standards prepared by these organizations.

I'm asking the government members to very seriously and knowing full well—and the government members can consult with any number of counsel or take a look at Black's Law Dictionary, the Canadian equivalent. There's the discretionary "shall" and there's the mandatory "shall." I appreciate that. It's not been a clean-cut path, but I'm suggesting here the word "shall," meaning that yes, the court has to give effect to the breed standards because that's all there is, assuming that they're relevant. It doesn't undermine the relevancy test. I'm assuming it's relevant and I'm sure in most cases it would probably be.

1350

I think the government had better think about references that are not appropriate. I think the government should perhaps even have a huddle and consider the "shall" on this one.

The Chair: Questions and comments?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote. Shall the amendment to the amendment carry?

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment to the amendment lost.

Mr. Kormos: I haven't spoken to the actual amendment.

Look, it's clear what the government is acknowledging, and that is that the Canadian Kennel Club, the United Kennel Club, the American Kennel Club and the American Dog Breeders Association are the authoritative bodies in terms of what constitutes a particular breed of dog. You heard that from any number of submissions during the course of this committee considering Bill 132. Similarly, you can't ask a court to consider these organization standards for your clause (a) small-p pit bull, because from these authorities' point of view there is no such breed as a small-p pit bull, which is why you haven't included that.

That's the answer to Mr. Tascona's question. He worked hard, he was drilling, but he missed the motherlode, through no fault of his own. You needed a dynamite man on that one, because these authorities will say, "There is no such thing as a pit bull as far as we, as authorities, are concerned," and in the cases of at least some of them, legislated authorities; in other words, having the power by law, as I understand it—and if I'm wrong, somebody should jump up right now and say, "You're wrong," but having the legislated authority to determine what constitutes a breed of dog. That's federal legislation. That's Jean Chrétien and Paul Martin kind of legislation, I presume.

The government throws this into the hopper, knowing full well that the breed definitions may be of little comfort in their pursuit of pit bulls; leaves it as purely discretionary and opens the barn door for clever counsel to persuade a court not to consider the breed standards because, after all, the legislation only says "may."

I've got to tell you, Chair, I am not supporting this amendment, because clearly, unless the government says "shall" and gives the appropriate seal of authority to these organizations—if it only leaves it up in the air as discretionary, the courts can consider this evidence anyway. Counsel will have no problem, using the federal agriculture act and the powers it gives the Canadian Kennel Club, arguing, "Your Worship, you've got to listen to what they say because the agriculture act federally says they're the organization that determines breeds of dogs and defines those breeds." So the amendment, without making it mandatory—"shall"—

does zip, nada, zero, and I will not, for one, be supporting this amendment. This is a ruse.

The Chair: Further questions and comments on the original amendment?

Mr. Tascona: Recorded vote.

The Chair: Recorded vote.

Shall the original amendment, number 13 in your package, carry?

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare the amendment carried. Number 14; Mr. Zimmer.

Mr. Zimmer: I move that the heading immediately before section 4 of the act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

“Proceedings—Part IX of the Provincial Offences Act”.

The proposed amendment is a technical amendment and meant to more properly reflect the nature of the proceedings under subsection 1(4) of Bill 132. Currently, subsection 1(4) of Bill 132 specifies that the heading immediately before section 4 of the act be “Offence proceedings.” However, these proceedings under section 4 of the act are not offences, but are order applications that cannot result in fines or a jail term being imposed on a dog owner, and the section heading should reflect that.

Mr. Kormos: The act currently says “Proceeding against owner of dog.” I appreciate that your amendment, offence proceedings, in view of the fact that this isn’t the quasi-criminal aspect of the provincial offences proceeding—but you weren’t happy with “Proceeding against owner of dog” that’s in the current act?

Mr. Zimmer: I’ve covered that in my remarks.

Mr. Kormos: You made no reference to the current act, “Proceeding against owner of dog,” did you? I guess you think you did.

If I may, Chair, I’m going to support this amendment, because to have left it as “offence” would have been misleading. They changed my mind.

Interjection.

Mr. Zimmer: They’re deleted in the current bill.

Mr. Kormos: They’re deleting—?

Mr. Zimmer: They’re deleted.

Mr. Kormos: What’s deleted?

Mr. Zimmer: Mr. Twohig.

Mr. Twohig: I think your question was proceedings against owner. That entire section is deleted in the bill, so the heading goes too. There is no heading; it’s gone.

Mr. Kormos: OK. But you don’t like “Proceeding against owner of dog,” because that’s what you’re talking about in any event, right?

Mr. Twohig: It’s not what I like or don’t like. What you have—

Mr. Kormos: Well, you know what I mean.

Mr. Twohig: What you have in the bill is “Offence proceeding” and it’s not accurate.

Mr. Kormos: And that’s not correct. That’s right. It’s the non-prosecutorial proceedings.

Mr. Twohig: Right.

Mr. Kormos: OK. It’s proceedings against the owner of a dog.

Mr. Twohig: Right.

Mr. Kormos: This isn’t the biggest deal in the world, this particular amendment.

Mr. Zimmer: I understood it. Did you?

Mr. Kormos: We should have struck a deal on this amendment a long time ago. We could have speeded things up. This was an easy one.

The Chair: Mr. Tascona?

Mr. Tascona: Part IX of the Provincial Offences Act reads as follows—it’s under section 161. It says,

“Where, by any other act, a proceeding is authorized to be taken before the Ontario Court of Justice or a justice for an order, including an order for the payment of money, and no other procedure is provided, this act applies with necessary modifications to the proceeding in the same manner as to a proceeding commenced under part III, and for the purpose,

“(a) in place of an information, the applicant shall complete a statement in the prescribed form under oath attesting, on reasonable and probable grounds, to the existence of facts that would justify the order sought; and

“(b) in place of a plea, the defendant shall be asked whether or not the defendant wishes to dispute the making of the order.”

Part III is “Commencement of proceeding by information.” What you can do is, you can either ticket the person you want to charge or you can lay an information before the justice of the peace and have that information sworn before you charge that person. So that’s the procedure that you’re going with.

1400

The people who have the information laid or charge people are provincial offences officers. “Provincial offences officer,” as defined under the Provincial Offences Act, “means a police officer”—so you’re giving powers to police officers to do this—“or a person designated under subsection 1(3).” Now subsection 3 is titled “Designation of provincial offences officers: (3) A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences.”

I think we heard evidence about this, I don’t think from police officers, about the job that they’re going to have to do on this. Who have you designated, or who are you thinking of designating, to do the work of charging, either by ticket or through information?

Mr. Twohig: My understanding is that the system already exists and there is no authority, at least in the

DOLA, to designate anyone else. There are people out there who are already designated.

Mr. Tascona: Well, who are they?

Mr. Twohig: Frankly, I don't know the full breadth and scope of who they are. They probably are police officers.

Mr. Tascona: Well, wouldn't you think you'd know? With respect to you, wouldn't you think the government would know? Part IX proceedings are very specific proceedings with respect to enforcement, charging people, because you're going under part III. You're going to ticket or you're going to go to an information. So I'm asking you, because this is a big issue we're doing here—the enforceability. It's the biggest issue, because the DOLA is not being enforced. Now you've gone to part III proceedings—even though you call it part IX, but it's really part III that you're going to be using.

I'm asking you, who's going to be used, other than police officers, because they're specifically said? Who are you thinking of using? Don't tell me the situation is already in place, because it's not in place. This is a brand new procedure with respect to the enforcement of dog owner liability. It's a brand new procedure which hasn't been used before. If it has been used before—I don't know how you could have used it before, because it wasn't specified. You've specifically gone to part IX, which gives you the rights under part III. So who are these other people who are going to enforce the law? You should know, because you put this amendment in.

Mr. Lewis: Mr. Chair, if I may speak to that, our own understanding of part IX application is slightly different from that of the honourable member. Part IX applications: That particular procedure is currently being used under the Dog Owners' Liability Act. Actually, it's specified under subsection 4(1): "If it is alleged that a dog has bitten or attacked a person or domestic animal, a proceeding may be commenced against its owner and the proceeding is one to which part IX of the Provincial Offences Act applies." What that really means—

Mr. Tascona: I know that. I'm asking you, who are you using to do this work? Because that's the problem on this.

Mr. Lewis: Currently, it's possible for a police officer, it's possible for an OSPCA officer, and it's possible for an individual to initiate part IX proceedings under the POA. That, from the information I do have, has always accorded.

Mr. Tascona: That's not very good. People should know how this thing is going to be enforced.

Mr. Lewis: That is the reason why the amendment is being proposed, to clearly indicate that part IX of the POA proceedings—

Mr. Tascona: I accept that.

Mr. Lewis: —are really different from—I mean in the part III proceedings, which is that of the offence provision.

Mr. Tascona: Yes. All I asked was, who have you got designated—because it's a designation order by the province. Who have you got designated to enforce this act?

Mr. Lewis: The designation, in my own respectful opinion, does not really apply with respect to part IX POA proceedings.

Mr. Tascona: I disagree with you. You ought to read the act, because you're wrong.

Mr. Lewis: Well, that's what the people who are currently doing it in the field tell us.

Mr. Tascona: It says specifically that provincial offences officers are interpreted as a police officer or a designated person by the minister of the Crown, which is the Attorney General. All is asking you is, who have you got designated?

Mr. Zimmer: I think you've asked him three times, and he's answered three times.

Mr. Tascona: Yes, he doesn't know three times, and you should know. You don't know, so what else can I say?

The Chair: Further questions and comments?

Mr. Tascona: Recorded vote.

The Chair: Shall the amendment carry? Recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Miller, Tascona.

The Chair: I declare the amendment carried.

Page 15 in your package: Mr. Miller.

Mr. Miller: I move that clause 4(1)(b) of the act, as set out in the bill, be struck out.

Clause 4(1)(b) is "the dog has behaved in a manner that poses a menace to the safety of persons or domestic animals." The reason we're proposing this amendment is because of the vagueness of the statement "poses a menace." I can see situations, with the vagueness of this description, whereby you may have neighbours who are having disagreements or not getting along with each other suggesting that the neighbour's dog is posing a menace.

What I would ask the government is, what exactly does that mean? It is a very vague description, and I think there'd be all kinds of problems in court just proving that. I can see all sorts of problems with that terminology. It is because of that that we want to remove that description from the bill.

The Chair: Questions and comments?

Mr. Kormos: With respect to the mover—and I'm not about to disagree with him about the vagueness of it—I do want to indicate that I'm prepared to let the court determine whether it passes the test with respect to certainty.

I say this: In contrast to clause 4(1)(a), which talks about a dog that "has bitten or attacked," if our interest in dangerous dogs, vicious dogs and dog bites is to prevent the bite, we surely need a way to identify vicious and

dangerous dogs without referring to breed. This is the government's weakness, this is the government's downfall: that it's thrown all its eggs into the breed basket.

So I, with respect, disagree with my colleague Mr. Miller on this one. I will not participate in voting against clause (b) in this particular subsection. It may not be the best—who knows?—but the courts will deal with it if it's overly vague. Don't forget, New Democrats' proposals would have made this bill more effective, tougher and better. We may end up having to paint this government, at the end of the day, as being soft on mean and vicious dogs. They may have to wear that. But I'm not going to support this.

As I say, I respect Mr. Miller's opinion on this one. I understand his position, but I cannot join in rejecting clause (b) in what I'll call the civil proceeding section of the bill, as compared to the offence section.

Mr. Miller: Just to respond to that, this legislation has all sorts of problems, and they've been illustrated, especially the definition of "pit bull." The fact that the pit bull terrier is not even a recognized breed has recently been pointed out. This is another situation where it's just bad legislation, and it's going to create all kinds of problems. It's going to create fights between neighbours; it's going to be used as a tool against neighbours who aren't getting along.

1410

I would love to hear from the government about what they think "poses a menace" means. If a neighbour's dog barks at another neighbour's, is that posing a menace? We've probably all walked down the street with dogs and had them growl the odd time. Is that posing a menace? Is the owner of a dog going to be in court because of that? That's something I would like to have some clarification on.

The Chair: Further questions and comments? Shall the amendment carry?

Mr. Miller: Recorded vote.

Ayes

Miller.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.

Page 16: Mr. Miller.

Mr. Miller: I'd like to move that subclause 4(1)(c)(ii) of the act, as set out in the bill, be struck out; and that is, "behaving in a manner that poses a menace to the safety of persons or domestic animals."

Once again, the vagueness of this description, I believe, will just create all kinds of problems. I haven't had the government explain to me yet what "poses a menace" means, and that would be helpful because, not being the lawyer that Mr. Zimmer or Mr. Kormos are, I consider it to be quite a vague term and I can see all

kinds of problems with that use of terminology. We're here trying to make laws for the province of Ontario. We might as well make ones that work and don't just end up in significant court costs.

If you look at the research done on the case in England, you'll note that from September 1995, the English law to do with breed-specific was passed in 1991 and "in September 1995, the Daily Mail (London) reported that an estimated £10 million of public money had been spent since the act came into force in 1991." I can see we're heading down that same road. We're going to be creating an unworkable law that is going to be very expensive for the province of Ontario, very expensive and troublesome for the people of Ontario, and it's not going to accomplish the goal it was set out to do, which was to protect the people of Ontario from dangerous dogs. So I'm trying to improve the bill a little bit by removing a vague term that will be very difficult and problematic in the courts.

The Chair: Further questions and comments?

Mr. Kormos: Again, this amendment is a logical one. It's a parallel of Mr. Miller's previous amendment. I again respect his arguments about it and understand his reasoning, but New Democrats will not join in deleting this section from the amendment from the bill.

Mr. Tascona: I apologize. I had a class photo I had to attend to with St. Michael the Archangel from Barrie. So I apologize.

The Chair: You never have to apologize for going to see a school.

Mr. Tascona: The reason why we put this in here is it's categorically different from what's historically been in the DOLA, which is biting or attack. As I said earlier in our opening statements, language such as "poses a menace to the safety of persons" or "domestic by its behaviour" certainly are vague terms. The question is whether it'd be a subjective test that would be used or an objective test, because it may be that the judge says it's in the mind of the person who feels they are going to be harmed. That's really the definition of "menace."

The other question is whether, if it's an objective test, when you look at all the circumstances, would it be viewed as imminent danger?

My concern is—and I think probably my colleagues have stated this—based on the Liberal amendments, we're turning this into a tremendous situation of a court backlog and evidentiary problems. You can see in situations where they're going to be laying an information or ticketing somebody—and Mr. Kormos would know this because he did criminal work—they're going to have alternative charges or different counts. Whether there was a bite or an actual attack, I guess those would be the basket clauses, as our ministry advisers like to call them, in terms of getting someone convicted.

I think in terms of fairness, "a menace to the safety of persons or domestic animals" by its behaviour is far too vague and they're going to make this far too litigious in terms of what we're trying to deal with here. I think we're trying to protect people from being bitten or

attacked, as opposed to bringing in another level of test, which quite frankly is going to be very difficult. I really don't know how the judges will look at this in terms of how they want to apply it. It may come from tort experience in terms of how people get injured, and they look at it and say, "Do you use the thin skull case in terms of how a person was affected, or do you look at the overall situation?" So it's going to be very litigious. It's going to tie up the courts and I don't think it's going to serve the purpose in terms of what we really want to do in terms of trying to protect the public and make sure that we have a fair process for the people who are being charged, and also not making the situation even more difficult for crown prosecutors who are going to have to litigate this. Those are my comments on this.

The Chair: Further questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

The Chair: I thought so.

Ayes

Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.

Page 17 in your package: Mr. Zimmer.

Mr. Zimmer: I move that section 4 of the act, as amended by subsection 1(5) of the bill, be amended by adding the following subsection:

"Standard of proof

"(1.3) Findings of fact in a proceeding under this section shall be made on the balance of probabilities."

The proposed amendment addresses the issue of the standard of proof in order applications under part IX of the Provincial Offences Act. Currently, part IX of the Provincial Offences Act does not state the standard of proof required to substantiate an order application under this part. This leaves open the potential for confusion and inconsistency in part IX proceedings. The Ontario government would like to be sure that the standard of proof utilized by the courts under Bill 132 for part IX order proceedings is clear and consistently applied. The balance of probabilities standard is consistent with the fact that proceedings under this part of the Provincial Offences Act are not offences.

The Chair: Comment?

Mr. Kormos: I really do want to know what—part IX of the Provincial Offences Act does not codify the standard of proof. Surely this has been an issue. What is the law around the standard of proof in part IX proceedings?

1420

Mr. Twohig: Mr. Kormos, to answer your question, again, notwithstanding your earlier accolades, we are not in fact experts on every area of the law. We did consult

people who work in the ministry in this area and we asked the question, "What is the standard of proof?" We are told it's the "balance of probabilities"; it's not "beyond a reasonable doubt." Although the suggestion was made—and this is used for a host of acts: the Line Fences Act, the Dog Owners' Liability Act. The suggestion was made to make it abundantly clear and to assist those who may not ordinarily be familiar with the statute with help to state, quite frankly, what the standard is.

Mr. Kormos: Help us, then, because I think I'm familiar with "beyond a reasonable doubt." "Balance of probabilities" is a classic civil standard. I know I've been involved in debate around legislation where there has been, on the part of any number of governments, contemplation of yet a third standard, somewhere in between "balance of probabilities" and "beyond a reasonable doubt." Are you familiar with that?

Mr. Twohig: "Clear and convincing," is that it?

Mr. Kormos: Yes, that type of—the perception and the argument is that it's one up from "balance of probabilities." I'm prepared to concede that in the part IX proceedings, which do not have quasi-criminal consequences—to wit, fines, jail—in my limited knowledge, I'm prepared to concede that "beyond a reasonable doubt" would be an onerous standard. Others may say otherwise, others may disagree—who knows?—but "balance of probabilities" is a very low standard—I mean, not very low. It's high enough for resolving multi-million dollar lawsuits, I suppose. Was there any contemplation given to tinkering with "balance of probabilities" and any alternatives to "balance of probabilities"?

Mr. Twohig: I think the contemplation here was simply to reflect the law as stated. Whether the law is to be changed statutorily, that's an issue for government and for this committee.

Mr. Kormos: So you're telling us that the standard applied currently in provincial offences court by primarily justices of the peace is the "balance of probability" standard.

Mr. Twohig: We're told if they apply the law correctly, that's the standard that should be applied.

Mr. Kormos: Forgive me for being obtuse on this one, but do we have a handle on that? Do we have a reference point? I know JPs get directives, for instance. What I want to be clear on before we vote on this amendment is that there's no doubt about the fact that "balance of probabilities" is the standard that's applied, that it has been determined authoritatively. That's what I'm asking: Has it been determined authoritatively? Has there been litigation around what is the appropriate standard?

Mr. Twohig: I'm told that there has been. I don't have my fingers on the cases, but I asked the criminal law experts, the people who deal with provincial offences, more about part IX proceedings, and I was told this is the correct standard.

Mr. Kormos: I'm not being critical of anybody on this one. I mean, heck, this committee is codifying the

standard, and that's not done in most places, is it, or in most of our statutes? We have these various standards and there's law. So my concern is, why are we codifying it if it's already law? If it's not already the law, that could be an explanation for why we're codifying it, or if the law is unclear. So, help me. Are we to understand that there are differences of opinion, that this is unresolved? I personally am not familiar with it at all, from the Provincial Offences Act and the provincial offences court. Are there two streams of judicial authority on this? That's what I want to know. Is it still a matter that's a contest out there in the judicial world?

Mr. Lewis: Again, all I can say is that we did consult with the criminal law division. When we consider the fact that we have three types of proceedings under DOLA—and the whole point of bringing in Bill 132, apart from the ban component, is also to more or less improve on the legislation. All these are designed to make sure that a particular provision is intended to do exactly what it has to do.

Mr. Kormos: I'm not quarrelling with that. I'm not being adversarial around this one. All I'm saying is that, yes, I hear what you're saying, the civil standard balance of probabilities, that these are not the quasi-criminal types of proceedings in the Provincial Offences Act. All I'm concerned about is that we're being asked to consider this amendment and vote on it, and I'm not being assured that there is a contest out there. It seems to be that the proper place, if that amendment is going to take place, should be in the Provincial Offences Act, identifying that part IX proceedings use this standard so that there is uniformity. It bothers me a great deal. What are we saying, what is the Legislature saying, what does the act say if one provincial offences act, to wit, the Dog Owners' Liability Act, says proceedings under this portion of it shall be proceeded with using the balance of probabilities test, yet other parallel statutes—this bill's sister and brother statutes, similar provincial offences statutes—don't have that provision? Does that say something?

Mr. Twohig: Your question is, is there some debate, is there some controversy. I'm not aware of any. Does that mean there isn't any? I don't know.

Mr. Kormos: Yes, I know. I appreciate that.

Mr. Zimmer, I have concerns about being asked to vote on this and put into this Dog Owners' Liability Act the standard of proof when, as I say, it seems to me that if it's going to be codified, it should be codified in the Provincial Offences Act. I can't read minds very well, but I suspect a little bit of you might agree with that—maybe the part that's not going to be speaking right now—that it should be codified in the Provincial Offences Act, not in this particular statute. I don't know if it has ramifications or not. Smarter people than I will think about that. But to have one Provincial Offences Act codify the standard as being balance of probabilities when dozens of other provincial offences acts don't codify it, are we creating a problem here? That's all I'm asking: Are we creating a problem? If that's the law already, there's no need for the codification.

So I will not be voting for this amendment.

Mr. Tascona: I have problems with this because the findings of fact in a proceeding are going to be on a balance of probabilities, which is a civil standard, but then you go on to section 19:

“Onus of proof

“(3) For greater certainty, this section does not remove the onus on the prosecution to prove its case beyond a reasonable doubt.”

So you've moved to a criminal standard with respect to the crown's obligation to prove its case beyond a reasonable doubt, but for evidentiary findings of fact, you've gone to a civil standard. Peter's point, where there's a third element—to be able to ticket somebody and to be able to lay an information, you need reasonable and probable grounds, which is different from a balance of probabilities. You need to have reasonable and probable grounds to lay an information or ticket somebody, yet when you get to court, in terms of trying to prove the case against somebody, you get to go to a lower standard, which is the balance of probabilities, and yet you go to a criminal standard in terms of the crown's obligations to prove the case. That gets completely confusing. So your answer to Mr. Kormos was not correct when you said about the reasonable doubt provision not being there. It is there. You put it in there. That's part of your amendments.

I don't even want to ask you, but I think I have to: What are we doing here? Why would you put findings of fact at a lower level than what you need to get an information or a ticket? If you talked to somebody in the criminal division, I really am amazed that they would try to make their job even more difficult than it already is. So take a run at it.

1430

Mr. Lewis: As I understand Bill 132, there are three types of proceedings contemplated. There is a civil proceeding whereby a victim can file for civil damages. The second type of proceeding has to do with part IX of the POA, and that is, in essence, seeking compliance orders. They are really compliance orders that go to the heart of responsible dog ownership. In other words, anyone can initiate a proceeding under part IX. It has been specified that in these particular proceedings, the standard of proof is really on the balance of probabilities, because such proceedings will not result in a fine being imposed, nor will they result in the dog owner being jailed.

Section 19, which the honourable member has referred to, has to deal with the offence proceeding, to which part III of the POA would apply. That is the part where a dog owner can be fined by the courts and where a dog owner can lose his or her liberty. To make sure that it's in consonance with the general principles of criminal law, that's why it's stated there that the prosecution has to prove its case beyond a reasonable doubt.

Mr. Tascona: I have to disagree with you because, from what I can see here, you're wrong. Section 2 of the Dog Owners' Liability Act deals with civil cases against

the liability of an owner. Section 4, which is being amended, deals with the proceedings under the Provincial Offences Act. That's what we're dealing with. We're dealing with proceedings under the Provincial Offences Act. What they're doing is—

Mr. Lewis: Four goes with the POA, part IX.

Mr. Tascona: No. We're adding (1.3) to section 4, which is the proceedings under the Provincial Offences Act. What you have done—and you may not have drafted this properly—is lowered the standard of evidentiary findings of fact from reasonable and probable grounds to the balance of probabilities. Then you've gone on later—because you've got this catch-all of the reverse-onus provision to make sure you get yourself a conviction—to a reasonable doubt. So I have to correct you: We're dealing with section 4, which is proceedings against the dog owner under the Provincial Offences Act.

I can't support this, because you've got to be fair. If you can't get an information or a ticket against somebody unless you have reasonable and probable grounds, why should you lower the standard in a trial?

Mr. Lewis: Again, I'll only make reference to the Dog Owners' Liability Act, of which I have a copy. I will read into the record again subsection (1) of section 4. It says, "If it is alleged that a dog has bitten or attacked a person or domestic animal, a proceeding may be commenced against its owner and the proceeding is one to which part IX of the Provincial Offences Act applies."

Part IX, in my own humble submission, is not a replication of part III. It simply says a proceeding akin to part III of the POA.

Mr. Tascona: No. With respect, I read part IX to you in terms of the Provincial Offences Act. It specifically says that where there are no proceedings that would apply, "This act applies with necessary modifications to the proceeding in the same manner as to a proceeding commenced under part III, and for the purpose"—to make it even clearer, in place of an information, you have to have reasonable and probable grounds. Whether I accept that it's under part IX or under part III, it still has to be reasonable and probable grounds. I'm reading it.

I can't support this. I think you're creating a mess and I think you're doing a disservice to the hard-working prosecutors in this province who work for the Attorney General and to the people who are being charged in this, in terms of lowering the standard of what they would be charged under. That's just a fact.

Why then do you later go on and say to the crown, "You've got to prove your case beyond a reasonable doubt"? We're either going to have a civil standard, a quasi-civil standard or a criminal standard. You guys have picked all three and you haven't decided which one you want. That's all I can say. Quite frankly, you're going to have to read the Provincial Offences Act, because I'm just reading what it says.

I think you've got a mess here and I think you're causing even more problems in the court proceedings than was ever intended. Of course they were going under part IX, but they go to part III to get the meat of how they're

going to proceed, but it's still reasonable and probable grounds. We'll deal with section 19 later, because you've gone to a criminal standard at the end of the case, anyway.

The Chair: Further comments?

Mr. Kormos: I have no questions for these gentlemen, just comments. My concern is still this: I have no quarrel with—if that's the law, and you say it is the law—reasonable and probable grounds being the standard of proof used under part IX of provincial offences proceedings. But if it is the law, then I say we have no need to codify and incorporate it into the Dog Owners' Liability Act. I ask this, and perhaps very naively: By inference, does it then cast some concern about the standard of proof to be utilized in any other number of provincial offences legislation that have not codified that the standard of proof is to be reasonable and probable grounds? We surely—just a quick review of some of those other acts that are dealt with, and you made reference to them just a few moments ago when you were talking about part IX—don't want to give somebody an argument to bring a criminal standard of proof into those, or else they'll become totally irrelevant in terms of the goals that they have. I think you understand this, Mr. Zimmer, and I'd appreciate your comments on it as well, if you're inclined.

So I'm just concerned. At the end of the day, don't pass an amendment if you don't need the amendment. That's one of those maxims. I'm not trying to be helpful to the government. I'm expressing concern about the chaos, or risk of chaos, with respect to other good Ontarians who then have doubt cast on the standard of proof to be utilized in their part IX proceedings, if it doesn't happen to be the Dog Owners' Liability Act.

Mr. Zimmer: Just by way of reply, I want to reinforce the point made, particularly by Mr. Lewis, that Mr. Lewis and his team took advice from the criminal law section at the Attorney General's office on this issue. I wanted to note that, particularly to Mr. Tascona's comments that this was going to cause grief on the prosecutorial side of things in the province.

The Chair: Further comments? Shall the—

Mr. Tascona: Recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Miller, Tascona.

The Chair: I declare the amendment carried.

Prior to commencing page 18, would it be the committee's pleasure for a five-minute recess?

Mr. Kormos: Or six.

The Chair: How about six? We'll reconvene at 14 minutes before 3.

The committee recessed from 1438 to 1448.

The Chair: Thank you for returning expeditiously to your seats. The Chair has granted a generous six minutes. We are now considering page 18 in your package.

Mr. Tascona: I move that subsection 1(7) of the bill be struck out.

That deals with dog behaviour posing a menace to the safety of persons or domestic animals.

I want to ask a question, if I can, if I can get an explanation. What's the difference between an attack and a person or domestic animal being menaced? Bearing in mind an attack doesn't mean that you're bitten, what's the difference between an attack and being menaced?

The Chair: For clarification, are you asking that of the parliamentary assistant or the staff?

Mr. Tascona: The parliamentary assistant, if he wants to give it a go.

Mr. Zimmer: My first answer is, the language speaks for itself.

Mr. Tascona: Not good enough. Could legislative staff assist me?

Mr. Kormos: Did you used to get beat up a lot in high school?

The Chair: Let's keep our comments, please, directed to the Chair.

Mr. Tascona: Can I ask legislative staff if they can join us for a moment here? I'll be brief, but hopefully not as brief as the parliamentary assistant.

Mr. Zimmer: Yes, I know, but now you've opened the door for Mr. Kormos.

Mr. Tascona: What is the difference between an attack versus menacing?

Mr. Twohig: I think that's something that'll be decided on a fact-by-fact, case-by-case basis by courts.

Mr. Tascona: What do you think? Do you have a personal opinion on it?

Mr. Twohig: I think it's a broader test to be used by the courts.

Mr. Tascona: "Menace?"

Mr. Twohig: Yes. For a dog that attacks, you have some sense of what that is, but a dog that menaces may add a new dimension to what the courts—

Mr. Tascona: Can you give me an example of what you think menacing is?

Mr. Twohig: The dog next door continually shows up at your door, growls, tries to jump up, tries to get into your house, hasn't attacked you, hasn't bitten you. Sure is menacing.

The Chair: Further questions and comments?

Mr. Kormos: I'm just trying to be very careful here. This amends subsection 4(3) of the existing act, so that it is the parallel of the new subsection (1)?

Mr. Twohig: It's not the government's motion.

Mr. Kormos: I'm asking about the section they're asking to be deleted. They're asking that subsection 1(7) of the bill be struck out—this is why I'm asking you—because it is subsection 4(3) of the act. I'm asking you. I just want to make sure that I know what's happening here: You're amending subsection 4(3) so that it is the parallel or the complement of subsection 4(1)?

Mr. Lewis: Yes.

Mr. Kormos: OK. So 4(1) are the part IX proceedings, but it says "under this section," so 4(3) is still part IX proceedings. OK. So it's just making sure that the findings are the findings that you initiate the process for. OK.

Mr. Lewis: It's just for consistency's sake.

Mr. Kormos: Gotcha.

The Chair: Further questions and comments?

Mr. Tascona: Recorded vote.

Mr. Kormos: If I may, Chair—

The Chair: Shall—sorry?

Mr. Kormos: You said questions or comments. Mr. Tascona commented by saying, "Recorded vote." I wanted to make yet a further comment.

Again, with respect to the mover of the motion—and I understand the argument made behind it, but we have subsection (1), which is the grounds upon which a process can be initiated, which of course, when it comes down to the clause-by-clause voting, may or may not be supported by the committee, although I suspect it will. What I'm saying is that I'm clear now that subsection (7) amends 4(3) so that it's consistent with 4(1). In that respect, I will not support striking out 1(7) of the bill.

Mr. Tascona: We're dealing with it on a principle throughout. We do not see that there is a categorical difference between an attack and menacing. I think the counsel for the government has indicated—as I said earlier, it's to cover all the bases. That's basically what they're trying to do here. So we don't support it.

The Chair: Further comments? Shall the amendment carry?

Ayes

Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.

Page 19: Mr. Tascona.

Mr. Tascona: I move that subsection 1(11) of the bill be struck out.

It deals with pit bulls and the breed ban, and we don't support that.

The Chair: Questions and comments?

Mr. Kormos: Look at subsection 1(11), amending subsection 4(6). Subsection 4(6) is the considerations that the court may utilize in the existing bill, the Dog Owners' Liability Act. I want to understand clearly at the beginning, "Except as provided by subsections (8) and (9)," and (8) and (9) are new subsections that are in the government bill amendment. Explain, please, what subsections (8) and (9) do to the bill: "or for the purposes of public safety" and "posting warning signs." I'm trying to understand this section that the motion would strike out.

Mr. Twohig: (8) and (9) require that a court—if they decide to make an order under a part IX proceeding, (8) says that a mandatory order must be made—

Mr. Kormos: Does it?

Mr. Twohig: Yes. If a dog is a pit bull, it must be destroyed.

Mr. Kormos: Hold on. I'm looking at paragraphs 8 and 9, as compared to subsections (8) and (9). OK. Help me, then, because what this does is restrict the court's discretion—as a matter of fact, it eliminates the court's discretion. If it's a pit bull, the court doesn't have the power to pick and choose, to go down the checklist of conditions. The dog is destroyed. Is that correct?

Mr. Lewis: Correct, yes.

Mr. Kormos: So for the pit bull that bites, there's no option for the court. There is one resolution. There is one disposition that can be made, and one only, and that's destroying the dog.

Mr. Lewis: Oh yes, the court is directed under those two clauses. They are mandatory orders that a court will have to impose if the dog is found to be a pit bull.

Mr. Kormos: Thank you. In other words, the section that this Conservative motion would strike out says, in my understanding, that if a dog had, in my example, the misfortune to be identified as a pit bull, because of course it may not really be a pit bull, and even if it engaged in a level 2 bite, a bite that we were told is the bite that exonerates dog breeds other than pit bulls—we were told that, "Yeah, but when the X, Y or Z bites you, it just bites and then retreats." I'm working in my own mind now. I'm being very careful with this, Mr. Zimmer.

So the dog that bites and retreats is not to be subject to the same standards as a dog that doesn't just bite and retreat—the level 2 bite or the level 3 bite, even. I share the concern—I know what vicious dogs are, but since we don't know what pit bulls are, the pit bull that merely does the snap bite, like those little fox terriers are inclined to do, as I recall them on people's doorsteps, is going to be destroyed. The court doesn't have the same discretion.

1500

I fear that this section merely underscores the government's obsession with breed-specific bans as compared to a real, enthusiastic, aggressive and broad-reaching regulation of dogs such that we avoid vicious dog bites. I'm going to support the Conservative amendment.

The Chair: Questions and comments?

Mr. Tascona: Just to comment on that a little further for my friend Mr. Kormos: Subsection 4(8) applies to where a pit bull has bitten or attacked or has behaved in a manner that poses a menace; that's where the mandatory order applies. Subsection 4(9) goes on with respect to a pit bull owner, in terms of the mandatory order for destruction. It is specifically designed for a pit bull as opposed to any dog in particular. That's why we've opposed it and that's why we're proposing the amendment.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 20.

Mr. Tascona: I move that subsections 4(8) and (9) of the act, as set out in subsection 1(12) of the bill, be struck out.

My comments are the same that we used with respect to the previous amendment, because we're dealing with mandatory orders with respect to pit bull destruction for those three categories: biting, attacking and being a menace. What we said before still applies.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 21.

Mr. Zimmer: I move that section 4 of the act, as amended by subsection 1(12) of the bill, be amended by adding the following subsection:

"Onus of proof, pit bulls

"(10) If it is alleged in any proceeding under this section that a dog is a pit bull, the onus of proving that the dog is not a pit bull lies on the owner of the dog."

This proposed amendment would confirm that in compliance order applications that cannot result in fines or a jail term, the onus of proving that a dog is not a pit bull lies on the owner. This proposed amendment should be taken in context with the government's forthcoming motion to amend section 19 of Bill 132, which proposes to repeal the reverse-onus requirement in provincial offence proceedings and replace it with another method of proving dog classification.

The Chair: Discussion?

Mr. Kormos: I've got my little package of amendments open to page 34 right now, your section 19 amendment. As I understand what's happening here, the government acknowledges that the mere allegation of constituting proof, subject to being disproven by presumably the owner of the dog, is considered unacceptable for the quasi-criminal proceedings but will be retained for the non-quasi-criminal proceedings, the so-called civil proceedings.

I think, once again, we've got the government sucking and blowing. You haven't created much of a standard of proof in your section 19 amendment. I'm going to have a

few things to say about that when we get to it. But I, for the life of me—if a process for identifying a dog as a pit bull is a fair process in one part of the act yet too onerous a process in another part of the act, then I say all this does is confirms, corroborates, like Mr. Bryant demonstrated so clearly on that wonderful television clip, that it ain't as easy as you think to pick the pit bull out of the lineup. This is unfortunate and regrettable and I will not be supporting this amendment.

The Chair: Questions and comments?

Mr. Tascona: This was commented on by Clayton Ruby, I believe, with respect to the court proceedings that may occur after the passage of this Liberal act, Bill 132, that putting on a reverse-onus provision is against the Charter of Rights and Freedoms. But apart from that, the government sure is making its job easy in terms of the identification of a pit bull and in terms of the veterinarian certificate.

If a veterinarian certificate says that this particular dog is a pit bull—it says, “absence of evidence to the contrary ... without proof of the signature and without proof that the signatory is a member of the college.” I can understand without proof of the signature, but wouldn't you think you'd have to have proof that the person is a member of the college to really have some basis for this to happen? I know you're trying to make it easy to get that evidence in, but do you know what you're really opening up? You're opening it up for expert evidence. How are you going to be able to deal with a veterinarian certificate? Of course, you're going to have to call that vet because you're going to want to know why they made that particular decision. It's totally unfair to the accused to not be able to cross-examine the veterinarian on a conclusion—it's not a finding of fact, it's a conclusion—with respect to whether the dog is a pit bull. You've got the reverse-onus provision in there saying that the onus that a pit bull is not a pit bull is on the owner of the dog. So if you come out with that certificate saying it's a pit bull, of course you're going to open it up to have to challenge that certificate and you're going to have to get that veterinarian there. So who are you going to call? You don't know who signed it and you don't know whether the person's a member of the college, so you're going to have to call your own expert to challenge the certificate.

To me, it's just totally ridiculous because it's not fair. If you're going to have your own expert, fair, bring him in, and then you can challenge what the basis of their decision is. But where it's putting the accused—they've got to call their own expert in. So how's the judge going to deal with this? He's got a certificate in front of him by a person and he doesn't know who it is, and he doesn't even know whether the person is a member of the college. Then he's going to hear evidence with respect to the only thing you could put forth, which would be an expert witness.

Mr. Miller: For a breed that doesn't exist.

Mr. Tascona: That's right. As Mr. Miller points out, a breed that doesn't exist, which is the pit bull terrier.

You've got standards for the other three categories, but you don't for this one.

I don't know whether you can call this putting the hammer down, but the bottom line is if we're trying to deal with due process here and being fair, you're not being fair by the reverse-onus provision. We already dealt with that. But the fact of the matter is, now you come in with a vet certificate and you're not even going to allow someone to challenge their evidence because you're saying it's conclusive. So of course you're going to have to call your own vet. What is that going to accomplish? I wouldn't want to be a judge hearing these particular cases, because it's just going to end up being a very lengthy procedure, very expensive for all sides around, and what will you have accomplished at the end of the day? Each case is going to stand on its own because each dog that's going to be in front of you is different. So I don't think you've accomplished anything.

To legislative counsel, is there anything wrong in terms of what I've said there? Do you disagree with me at all? Do you disagree that you've got to call your own expert to challenge this?

1510

Mr. Zimmer: I think you've got to be a little more specific, because there are a lot of governmental policy issues wrapped up in your comments, and I understand and respect those. But I think the questions to the lawyers from the AG's office should be on the legal matters that they've dealt with specifically.

Mr. Tascona: I don't know what you were listening to, but there are two issues here: reverses onus on the owner and, second, the evidentiary basis to identify a pit bull.

I've said my piece on it. I think the government has not thought this through. They are so paranoid that they're not going to be able to identify a pit bull, which is the pit bull terrier in their basket clause, that they have gone to extraordinary lengths to deal with the procedure and also the evidence in terms of the identification of a pit bull because they really don't know what a pit bull is. That's all I have to say.

The Chair: Further questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare the amendment carried.
Page number 22: Mr. Tascona.

Mr. Tascona: I move that clause 1(13)(b) of the bill be struck out. Once again, it's dealing with dog behaviour posing a menace to the safety of persons. I've stated

my case for that before in terms of that type of test and charge, so I've nothing else to add.

Mr. Kormos: I understand this amendment by the Conservatives is consistent with the position they held. It's a position that I don't agree with.

The Chair: Further questions and comments? Shall the amendment carry?

Mr. Miller: Recorded vote.

Ayes

Miller, Tascona.

Nays

Kormos, Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.

On page 23: Mr. Kormos.

Mr. Kormos: If I may, motion number 23 by the NDP amending the act was in response to the incredible oversight on the part of the government. In their obsession with cheap publicity stunts and their rush to get this thing passed, they actually deleted an important section from the Dog Owners' Liability Act. This amendment would have restored that section.

I note, however, that the next amendment in the bundle of amendments, number 24, is consistent with the position of the NDP amendment, so that it in fact amends the act so that the language is consistent with other parts of the act. I will, therefore, with the government's undertaking that it will indeed move amendment number 24, withdraw amendment number 23, because I've got a feeling that it'll get defeated.

The Chair: So amendment number 23 is then withdrawn.

Number 24: Mr. Zimmer.

Mr. Zimmer: I move that section 1 of the bill be amended by adding the following subsection:

"(13.1) The act is amended by adding the following section:

"Precautions by dog owners

"Owner to prevent dog from attacking

"5.1 The owner of a dog shall exercise reasonable precautions to prevent it from,

"(a) biting or attacking a person or domestic animal; or

"(b) behaving in a manner that poses a menace to the safety of persons or domestic animals."

The Chair: Questions and comments?

Mr. Tascona: Certainly the government has made a mistake. This section, with the exception of clause (b), which is "posing a menace," is the old section 6 of the Dog Owners' Liability Act, and the government missed it.

Apart from that, we can support 5.1(a), but we can't support 5.1(b) because we're dealing with this "posing a menace," which in essence is no different than attacking. I think it's going to be a mess, but the government

continues to want to deal with this. Certainly, if you attack somebody, you're threatening or putting them in apparent danger. That's really what attacking is; it's no different than menacing. But we could only support it if it were just 5.1(a).

Mr. Zimmer: This deals with the offence proceedings under part III of the Provincial Offences Act, rather than the earlier government motions dealing with the order applications under part IX of the POA. The proposed amendment requires that dog owners exercise precautions to prevent their dogs from biting, attacking or behaving in a menacing manner. Failure to do so would constitute an offence.

The proposed amendment is consistent with other provisions of Bill 132 that promote responsible dog ownership for all dog owners. Offences under this section will be prosecuted under part III of the POA and would be punishable by fines up to \$10,000 for individuals, or \$60,000 for corporations, and up to six months imprisonment. There's also a provision that the court could order that restitution be paid, and I want to acknowledge Mr. Kormos's support for this.

Mr. Tascona: I just want to comment. Let's not be ridiculous. The fact of the matter is, that is exactly the same section as section 6 of the current Dog Owners' Liability Act, and I'll read it: "The owner of a dog shall exercise reasonable precautions to prevent it from biting or attacking a person or domestic animal." You missed it.

The fact of the matter is, you're not putting anything new in here. You're basically just covering yourself because you left it out. But again, I say that we oppose clause (b) of that part. We can support 5.1(a), which is the current law anyway. You're not changing anything; you just missed it.

Mr. Kormos: I want to underscore what Mr. Tascona said, because it isn't a matter of the NDP endorsing the government's position. The NDP deplored the government's slovenly exclusion of this section from the Dog Owners' Liability Act. Here's a government that says it's serious and tough about vicious dogs, and it repeals one of the operative sections of the Dog Owners' Liability Act. What a stupid thing to do.

We're just glad that somebody on the government side, probably an underpaid staff person, was cognizant of the fact that there had been a screw-up and that there had to be some catch-up. That's why the government tabled its motion, presumably after I tabled mine, because it wouldn't have appeared as number 25 instead of 24.

Mr. Zimmer: You did, just for the record, withdraw your motion in anticipation of your support for ours, number 24.

Mr. Kormos: You guys screwed up, and I want to congratulate the staff person—

The Chair: A reminder to direct your comments to the Chair, please.

Mr. Kormos: I want to congratulate the staff person who caught the screw-up and who saved Mr. Zimmer's

bacon, if porcine references aren't inappropriate in a canine context.

The Chair: Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Miller, Tascona.

The Chair: I declare the amendment carried.

Page 25: Mr. Kormos.

Mr. Kormos: I move that section 1 of the bill be amended by adding the following subsection:

“(13.1) The act is amended by adding the following sections:

“Duty of dog owner

“Spaying, neutering

“5.2 (1) The owner of a dog shall ensure that the dog is spayed or neutered.

“Exception

“(2) Subsection (1) does not apply in respect of a dog licensed or registered as a show dog or as a breed dog.”

The Chair: Questions and comments?

1520

Mr. Kormos: Chair, if I may. For this not to have been a government amendment just boggles the mind. If there was one consistent thing that was said to this committee across the board from experts at home and far afield, it is (1) the need to control indiscriminate breeding by dogs; (2) to recognize, as I understand it, especially in the case of male dogs, the impact of neutering, and the observation that all pet dogs should be neutered or spayed, that backyard breeders should be discouraged and in fact not in operation, and that if there was one single thing that could be done to address the issue of dangerous and vicious dogs of all breeds, including so-called whatever-they-are pit bulls, it would be to require the spaying and neutering of all dogs that aren't licensed or registered as show dogs or breed dogs.

Mr. Zimmer has used language, of course, the language of responsible ownership. There wasn't a member of the public who appeared before this committee who didn't speak to that in one form or another. Responsible ownership surely should, as part of those responsibilities, include spaying or neutering the dog.

Now, there may be some knee-jerk criticism of this amendment by saying, “Oh, Kormos, you didn't specify at what age.” Well, that's what regulations are for. The fact is, the regulations can set out clearly what constitutes the point in a dog's life—clearly there's veterinary and expert evidence of the point at which a dog becomes capable of breeding. Before that point is the point at which you want to neuter or spay. There may well be—and I'm sure there is—expertise about when the neutering has the least painful impact on the dog. Well, think

about it, Chair. I'm sure that expertise is available, but that's what regulations are for, to set those standards as to what age it must be done by. As I say, clearly you want it done before the dog becomes fertile, either a male or female dog.

This also addresses the government's purported desire to ban so-called pit bulls, because if there's a province-wide requirement that all dogs other than dogs registered or licensed for breeding or show are neutered, why, there's a universal, understandable, logical, reasonable standard being applied to all dogs, to wit, all dog owners. In the course of time, effective enforcement of this spaying or neutering requirement would address a whole lot of things. It would address the issue, quite frankly, of unwanted puppies. There isn't one of us who hasn't lived in the real world who isn't familiar with a dog in heat, our own or our neighbour's, and the phenomenon of unwanted puppies and then having to dispose of those puppies, sometimes disposing of them in a way that seems harsh and cruel or ending up with those puppies being placed with families that probably shouldn't own a dog because they can't accept the responsibility.

At the end of the day, the issue is public safety. This section will do more to achieve public safety in the short and long term than any other part of this bill. It is something about which the veterinary community has expressed a real passion, and I daresay that you would find SPCAs and veterinarians across the province that would participate. I'm thinking here of families that don't have huge financial resources. I'm confident that there would be veterinarians and SPCAs across the province that would participate in community programs to spay and neuter dogs of families in compliance with this type of law, because I know there are veterinarians now that do it without there being any legislative requirement. I know that for a fact, both dogs and cats. They do it as a community service and their understanding of the importance.

I am so disappointed that this wasn't a government motion. It seems as if the government didn't hear a single word that was said or as if they only heard what they wanted to hear during the course of these hearings.

This is meaningful, effective and, at the end of the day, a heck of a lot less expensive than locking dogs up for six months at a time at the taxpayers' expense until the court gets around to adjudicating on that dog. As I say, this will do more to reduce vicious dog bites and attacks than any other measure that's been considered. I believe that. I don't take any credit for the authorship of it. It came clearly and directly from any number of submissions before this committee. Thank you.

The Chair: Questions and comments?

Mr. Tascona: I have to comment on this. We heard direct evidence from experts that the spaying or neutering of a dog has a significant effect on their conduct in terms of biting behaviour. For the government not to have heard that, they're really not interested in the behaviour of a dog—they're really not. They heard evidence throughout in terms of dog behaviour, but they continue

to treat dogs as objects, as we categorize what the Attorney General called—he described pit bulls as a killing machine. That’s basically his language.

We heard throughout the hearings about dog behaviour; not just about pit bulls, but also from experts in terms of how they train dogs, how they educate dogs in terms of what they can do to minimize and protect the public from dog conduct that is just not acceptable, yet nothing goes into this act other than ways to ensure that you get a conviction. That’s all the government’s amendments have dealt with: ensuring and easing the way to get a conviction. I don’t know why we went through this exercise in terms of trying to protect the public from vicious dogs per se, because nothing has been learned.

The Chair: Questions and comments?

Mr. Kormos: Recorded vote, please. Oh, before that vote, I seek unanimous consent for this to be a free vote.

The Chair: Shall the amendment carry?

Mr. Kormos: Recorded vote.

The Chair: The vote shall be recorded.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.

Page 26: Mr. Tascona.

Mr. Tascona: I move that sections 6 to 11 of the act, as set out in subsection 1(14) of the bill, be struck out.

Each one of those provisions specifically deals with the pit bull ban and, to be concise, it’s entitled “Pit bulls—ban and related controls.” It deals with ownership and strictly deals with pit bulls in terms of municipalities. We’ve indicated we don’t support the pit bull ban as it has currently been drafted and designed by the government. Our statements are on the record.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Kormos: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment defeated.

Page 27: Mr. Tascona.

Mr. Tascona: I move that clause 13(3)(b) of the act, as set out in subsection 1(14) of the bill, be struck out.

This deals with the warrant provisions, specifically dealing with a dog that’s behaved in a manner on more than one occasion that is menacing conduct. As indicated before, we are not in support of that particular test that’s been forced by the government because we don’t see it

being qualitatively different from what’s already there, being the attack. Those are our comments.

1530

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 28.

Mr. Tascona: I move that subclause 13(3)(c)(ii) of the act, as set out in subsection 1(14) of the bill, be struck out.

It’s dealing with the warrant provisions again and the dog behaving in a manner that is posing a menace. Our comments are as recorded.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 29.

Mr. Tascona: I move that clauses 13(3)(d) and (e) of the act, as set out in subsection 1(14) of the bill, be struck out.

That’s dealing with the warrant provisions again, and specifically dealing with the pit bull breed ban.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 30.

Mr. Tascona: I move that clause 15(1)(b) of the act, as set out in subsection 1(14) of the bill, be struck out.

This deals with the seizure of a dog in a public place and deals specifically with the dog’s behaviour posing a menace to a person or a domestic animal. Our comments are on the record for this particular test.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 31.

Mr. Tascona: I move that subclause 15(1)(c)(ii) of the act, as set out in subsection 1(14) of the bill, be struck out.

This deals with seizure in a public place and the conduct of a dog behaving in a manner that poses a menace. Our record stands accordingly.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 32.

Mr. Tascona: I move that clauses 15(1)(d) and (e) of the act, as set out in subsection 1(14) of the bill, be struck out.

It deals with seizure in a public place, dealing specifically with the pit bull breed ban.

The Chair: Questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost. Page 33.

Mr. Kormos: I move that subsection 18(3) of the act, as set out in subsection 1(14) of the bill, be struck out and the following substituted:

“Offence of absolute liability

“(3) An individual owner of a dog that bites or attacks a person or domestic animal is guilty of an offence and liable, on conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or both.

“Same

“(4) A corporation that owns a dog that bites or attacks a person or domestic animal is guilty of an offence and liable, on conviction, to a fine of not more than \$60,000.

“Order for compensation or restitution

“(5) If a person is convicted of an offence under this act, the court making the conviction may, in addition to

any other penalty, order the person convicted to make compensation or restitution in relation to the offence.”

Subsection (5) is, of course, subsection (3) in the existing bill. What this amendment does is what has been put to the committee as an effective deterrent, and if neutering and spaying would be the single most effective way of reducing and eliminating, to the extent possible, vicious and bad dog bites, this provision, which was responded to with interest by the Police Association of Ontario—you'll recall that when they were here, they contemplated this proposition and saw it as something that could well be taken up with their membership. What we're talking about is something that people talked about from day one of these hearings, and that is, you don't just put dog owners whose vicious or bad dogs attack and maim or kill in a position where they can be sued, you also put them in a position where they can be prosecuted to the extent that provincial offences allows quasi-criminal prosecution.

We heard from then Chief Fantino, now the emergency management czar, recipient of a chief-of-police pension and a golden handshake that I'm incredibly envious of and a new job with a salary that's so high that it's probably the reason why the government doesn't want to disclose it and probably a job contract with its own golden handshake provisions. Not bad for an Italian kid, is it? Not bad at all. I envy Chief Fantino. I've had cause to reflect on the fact that I thought I was so smart, I wanted to become a lawyer. I should have become a cop.

Mr. Mario G. Racco (Thornhill): He wants to be a cop.

Mr. Kormos: I would have done far better.

The Chair: The Chair asks you to address the topic under discussion.

Mr. Kormos: So now we've got then Chief Fantino, now provincial emergency measures czar, talking about how criminal types—hoods—are using dogs to intimidate people. He made reference to Caribana as a venue where this is being done. The fact is, people can do it now and their dogs can even bite or attack without fear of any personal repercussions, because the person who is inexigible—is that the word, Mr. Zimmer, inexigible?—has no fear of litigation. Mr. Zimmer will tell you, because he's a lawyer—he probably wishes he'd become a cop now too—that if a person is inexigible, they don't care if they're sued because they haven't got the money and you can't get blood out of a stone. You can sue them till you're blue in the face, you can spend a fortune on lawyers and get judgements left and right. The Dog Owners' Liability Act can be of as much assistance to you as you want in suing the people, but if they don't have the proverbial pot, never mind to throw it out the window, those judgments are a waste of time, energy and money. We heard from victims who were in that position. We heard from victims who were in a position where the owner of the dog that attacked them didn't have even household insurance that would permit them to access compensation through a claim that way.

So if we're talking about a deterrent, a way of deterring people—because I'm prepared to acknowledge

there are some players and actors out there who want mean, vicious dogs. They take a bizarre pleasure, I suppose, any number of things, in owning them and displaying them. Drug dealers use them for protection. If we make sure those people know that they're going to get whacked personally with a quasi-criminal prosecution, with a fine and the prospect of jail, then I say that's a deterrent to people who would otherwise want to own mean or vicious dogs. It's a deterrent to people who would train their dog to be vicious. It is a deterrent to people who would otherwise not exercise adequate precautions around a dog about which they had concerns. It would be a deterrent to people to not spay or neuter their dogs, especially neutering male dogs. It would be a deterrent to people to not engage in some minimal level of dog training—I guess dog obedience school types of things—when the dog is young and newly in the home.

1540

If, as I say, neutering and spaying is number one—and I believe it is—this is surely number two. This is what the people of Ontario want from this government in terms of vicious dog legislation. If you'd listened, this is what you were being told: Neutering and spaying of non-breed and non-show dogs, and criminalization—and I use that word guardedly, because of course the province doesn't have the power to criminalize anything—or the prospect of provincial offences prosecution and fines or jail sentences as a deterrent to people who don't do the right thing by their dogs.

You may counter that and say, "Well, what about Fluffy the puppy?" Al Leach, a former minister in the Tory government, had a dog that we made great fun of in the chamber. I can't remember the dog's name. I know we took great pleasure in naming it on frequent occasions. People are going to say, "What about the little puppy that just takes a nip at you? What if a charge is laid there?" I say that peace officers clearly have discretion about whether or not to lay charges. In all likelihood there would not be a charge. Come on, in any number of minor incidents, criminal charges aren't laid. The system simply can't endure every trivial—let's say people stealing a garbage item from in front of your house. You can call the police, but it's unlikely that they're going to lay a charge. The police in Toronto are too busy doing other things.

Quite frankly, with the little dog that nips—but, having said that, if we're interested in bringing people who own these dogs into the system, maybe a charge is a good thing. It doesn't mean that person has to go to jail. It doesn't mean they have to be fined \$1,000, never mind \$10,000, but it permits the authorities to intervene and to say: "Look, ma'am or sir, we appreciate this wasn't the worst dog bite in the world"—these folks understand—"and nobody wants you to do jail time for this, but here's a list of approved dog trainers or obedience schools in this municipality. Go and put that dog through obedience school," like a diversion program. It's not at all absurd.

Think about it. Think about what we heard from Ontarians and what they want. They want not to be attacked

and mauled by dogs. They want to be able to walk down the street and not have to be in fear of having a vicious dog attack them or their pet. I'm saying that this is a way to achieve that end. It can be as creative as the parties involved want it to be. It can be as novel and productive as the combined resources of things like local SPCAs, humane societies, animal control departments, veterinarians, dog clubs, dog breeders and dog kennels. This is the sort of stuff these people were saying they needed and wanted. All of those dog advocates—and I'll describe them just generally and generically as dog advocates—came before this committee saying, "We want to do stuff, real stuff, to prevent and eliminate vicious dog attacks and bites." End of story.

This gives them the tools. For the life of me, I cannot understand why the government would not adopt this provision. And I'll tell you what I'll do: If you're embarrassed about the fact that it's not your own amendment, if you're embarrassed about that because you want the cheap political stunt type of avenue to follow, give me your undertaking that you'll prepare an identical or similar amendment. If you give me that undertaking, Mr. Zimmer, I'll withdraw this. I'll let it be a government amendment. I'll let you have the press conference downstairs in the press gallery room, talking about how you criminalized dog bites. Because all we're interested in on this side is making this bill work.

You turned down the opportunity to have a provision for mandatory spaying and neutering—for the life of me, I can't understand why; explain that one—and I don't want to see you turn down a provision that would criminalize it. That's what you heard from so many people, that it would create specific deterrence. Again, I use "criminalize" in a very guarded way, knowing full well the province can't draft criminal legislation, but the province can make it an offence on the owner of the dog to bite. You don't need muzzle laws then. You don't need leash laws. You don't need that checkerboard of municipal legislation that does those things, because people, well aware of the fact that they could be whacked individually, will muzzle, leash, exercise control, train, spay and neuter and a whole bunch of other things.

You heard from some of the most tragic victims of dog bites. Just think for a minute. There were a couple of occasions of dogs that jumped out of a car or a truck. One was out of the back of a truck and one was out of a car. If people knew that if their dog was out there attacking people, they were going to be in trouble in the provincial offences court, you can bet your boots—you see, a whole lot of these people don't have any monetary exposure. If you don't have a whole lot of assets, if you're not at least middle-class, the prospect of being sued is no deterrent at all—zip. "Sue me until you're blue in the face." If in fact everybody had assets that they knew they would be putting at risk should their dog bite, it would be a different world, a different story.

Did you want to interrupt me?

Mr. Zimmer: Well, I wanted to a few minutes ago.

Mr. Kormos: I'm concerned that the government is not going to support this amendment. And, by God, I'm

confident this is the first and last opportunity I'm going to have to put this to the committee for it to be passed so it can be part of the bill that's reported back to the House. So don't think for a minute that I'm going to give it short shrift.

Now, others may want to talk about corporations and corporate liability, both with respect to this amendment and with respect to the bill as it stands. I know Mr. Miller has expressed concern to me—and I trust he will be speaking in due course—about what these fine provisions do. We didn't hear from very many of the non-profit dog utilizing groups. I know down where I come from, St. John Ambulance has a strong dog program. They go to seniors' homes and they work with patients in places like the Woolcott wing, the chronic wings of the hospitals. I'm sure there are other similar groups that train and breed or care for and promote seeing-eye dogs, for instance, or guide dogs, that might have similar concerns about the onerous liabilities they are having imposed on them with these corporate fines. I say this: Surely prosecutors and courts will be cognizant of the fact that the party in the proceedings is a non-profit corporation.

Similarly, I believe the government, with this bill, has set new standards that will generate new liabilities and will encourage litigation. I suspect this government is going to have to respond to the issue, because we never—at least, I'm not aware of our getting to hear about, and I haven't seen the research material yet, the insurance companies and how they're dealing with dogs, dog bites and claims that are made. It may well still be in the package. I haven't seen all of it yet.

So here you go, government members. As I said, Mr. Zimmer, if you don't want this amendment in my name, just say that you'll introduce a similar amendment. Make that commitment either now or, on unanimous consent, we'll go into committee of the whole for, let's see, 30 minutes—I'll agree to restrict it—and you can bring an amendment. Give me your word that you will bring an amendment like this, and we can go forward. Then you guys will have done something really meaningful about addressing vicious and bad dog bites—as compared to cheap publicity stunts.

1550

The Chair: Questions and comments?

Mr. Racco: Mr. Chairman, on a point of clarification: I didn't want to interrupt Mr. Kormos in his comments because I thought there was time to clarify the issue, but unfortunately I think Mr. Kormos may have made a statement before thinking. When he made reference to Chief Fantino, he also used the word "Italian." I happen to believe that the intent was negative. I don't believe it's proper, and I ask him to clarify his statement or remove the word.

Chief Fantino is an individual who lives in the same city as I do in Ontario. I believe he is a very capable individual, a man who is certainly admired by many people because of his qualities, not because of his ethnic origin. I believe it's wrong to make those types of statements, in particular when we read in the national newspaper state-

ments by Mr. Kormos to his colleagues which are not, in my opinion, a proper description of the individual.

I would ask that he clarify that statement or that he remove the word "Italian" before Chief Fantino, please.

Mr. Kormos: I would be pleased to clarify it. With all due respect, I was being complimentary to Chief Fantino, similarly being the child of immigrants and having expressed his pride at his accomplishments as this child of immigrants. I apologize to Mr. Racco for any offence, but I assure you that my comments were made as a result of my having known Chief Fantino for a good number of years now, knowing his pride in being the child of Italian immigrants—you're quite right—and having done so well and my pride as well in seeing immigrant Canadians and their children pursue and achieve elevated goals. Again, as a child who grew up in an immigrant family, I say God bless an Italian kid who does well, a Slovak kid who does well, a South Asian kid who does well, coming to this country and pursuing goals and achieving goals that may not have been available to him or her in the place where they came from.

The Chair: Is this satisfactory, Mr. Racco?

Mr. Racco: To some degree. I suspect that Chief Fantino got where he got based on his abilities, not necessarily because he is from an immigrant family or from whichever nationality. That is why I felt that was important to clarify. I'm happy, though, to note that Mr. Kormos thinks very highly of Chief Fantino, and if that is what he is saying, I am satisfied. Thank you.

Mr. Kormos: What would make you think I didn't think highly of him?

The Chair: Thank you.

Mr. Tascona: I'm not going to dwell on this too much, because I think there's some merit in the order for compensation or restitution. We heard in Barrie—and I'll mention the person's name—from George Scott, and I think we heard from other people, in terms of the costs they had to incur because they were not going to get involved in civil proceedings, though it's provided for under the Dog Owners' Liability Act because of the cost and whether the person would have the ability to pay at that particular time.

I think that where a person is convicted under the Dog Owners' Liability Act, the court, in addition to any other penalty—and we know that there are powers to levy a fine—can order the person convicted to make compensation or restitution in relation to the offence. I think that's a good move in terms of trying to make it victim-friendly, and I support that. I can't believe the government wouldn't support that provision from what they've heard because, quite frankly, it makes a lot of sense—

The Chair: Thank you.

Mr. Tascona: I'm still speaking, Mr. Chair.

The Chair: Oh, I'm sorry. Please continue.

Mr. Tascona: I think it makes a lot of sense, because the fact of the matter is, we have to deter irresponsible dog owners as best we can.

Quite frankly, if the criminal element is doing this and a police officer, for example, is harmed, a fine isn't going

to be enough and the extinction of the dog isn't going to be enough to the officer who is affected. There should be some compensation or restitution to the victim.

We heard from Chief Fantino and we heard from the police about the use of these dogs as weapons. They're obviously the most improper of dog owners, the criminal element, but by the same token you can have a situation such as George Scott and the people who were in Barrie mentioned with respect to where they're put to great expense, not only with respect to medical costs but also their own dog and the costs they had to pay to a vet, and yet there's no recourse other than launching a civil action. I think this is an appropriate time and place for this to happen.

I would think that the government, if they're really serious about deterrents, and I think that's what the intent of this is, would consider that particular amendment. If they want to add it to their current drafting of that section, which is in the bill under "Offences," if they want to add that as a subsection (4), I'd certainly support that.

I'd urge the parliamentary assistant, if he knows his way through the bill, that that's the spot where he could add it, under subsection (4) of section 18. That would be something that we could support, if in effect the government doesn't want to support the rest of this particular amendment.

The Chair: Mr. Kormos.

Mr. Kormos: I'll tell you what, Mr. Zimmer. We can just set this amendment aside, and now that Chief Fantino is working for you at a salary that is so embarrassing that the government won't disclose it, now that Chief Fantino is in your employ, I'll bet you dollars to doughnuts, Mr. Zimmer, that if you go to former Chief Fantino—now collecting his pension from the city of Toronto and concerning himself with attendances with financial advisers with that incredible, I still say not bad, golden handshake—Chief Fantino will say, "Darned right."

Let's set this aside. Tell me that we can, on unanimous consent, set this aside. You can consult with Julian Fantino because, dollars to doughnuts, he'll say, "Do it." How about that? Through you, Chair, can the parliamentary assistant agree to that proposition?

Mr. Zimmer: Let's just get on with the work of the committee and work our way through these clauses.

Mr. Kormos: You know, I cannot believe, Chair—

Mr. Zimmer: It's late in the afternoon.

Mr. Kormos: Well, it's going to be early in the evening soon. The days are getting longer and longer—

The Chair: Mr. Tascona.

Mr. Tascona: You're finished with him, but I am not finished with him.

Mr. Kormos: Go ahead. Neither am I, but you take your turn. We're like a tag team.

Mr. Tascona: I'm telling you right now, Parliamentary Assistant, that is something that you should be looking at if you really want some deterrents. You heard from people who basically have incurred major expense not

only in terms of their medical bills but also with respect to the damage that's been caused to their property and caused to their own animals. This is a provision that is already found in the victims' compensation act in terms of individuals who are hurt, but this is not under the Criminal Code. This is dealing with the Dog Owners' Liability Act.

Take it seriously. You should be looking at this. It isn't a major amendment. All you've got to do is add it to your section 18. You've got provisions in there: you increase the fine for an individual dog owner up to \$10,000; you increase the fine for a corporation up to \$60,000. Why don't you do something for the victim? You can exterminate the dog. You can put a penalty on the corporation or the person. Why don't you do something for the victim in this situation? You're doing nothing for the victim.

I'm going to urge you again: Why don't you do something for the victim by agreeing to the order for compensation or restitution in a proceeding where a person is convicted? Get serious about this. This is not a joke.

The Chair: Mr. Zimmer.

Mr. Zimmer: Let me then draw your attention to subsection 18(3) of the bill, "If a person is convicted of an offence under this act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation to the offence." It seems to me, Mr. Tascona and Mr. Kormos, with the greatest of respect, that captures your point.

1600

Mr. Kormos: Why are you talking to me? I'm talking about the criminalization—quasi-criminalization—of owners whose dogs bite. Now, if you disagree with that proposition, and you don't want to use the resources available to you—through you, Chair, to Mr. Zimmer—to confirm whether or not you want to incorporate this provision into this bill, then say so. But don't somehow suggest that you already have similar provisions.

I made it quite clear when I began my comments that we had to move your subsection (3) down to subsection (5), because I introduced two new subsections. So don't get off track, Mr. Zimmer. You're either going to listen to people who have made presentations, or you're going to pretend to have listened.

Chair, unfortunately the government won't go with neutering or spaying. That's what the experts told them across the board. It won't go with penalties for the owners of dogs that bite. That's what the public told them across the board. I can't for the life of me understand what this is, other than a rather increasingly feckless publicity stunt, not on the part of Mr. Zimmer but on the part of his boss, Mr. Bryant.

The Chair: Questions and comments?

Mr. Miller: I want to make a comment about the section that deals with corporations and the fact that the fine for corporations is very much higher than for individuals. Perhaps the government has overlooked the

non-profit organizations that deal with rescuing dogs. I just received an e-mail yesterday with the concern of a rescue organization, stating that they're a federal, non-profit organization "dedicated to act as a shepherd for unwanted, abandoned, neglected or abused Saint Bernards and Newfoundlands and other canines in need of help."

What bothers them is the difference in the fines for corporations and individuals. In their case, they're working to get dogs ready to be family companions, and they actively euthanize dogs that do not have a suitable temperament. But the dogs stay in the name of the non-profit organization. The way the bill is written, if one of their dogs was charged with a menacing behaviour while in foster care, their non-profit corporation, as the owner of the dog, could be fined, and fined an amount that they could not afford as a non-profit organization, even though they weren't the ones actually physically in charge of the dog.

The point they make is that the person at the end of the leash should be the one responsible for handling the dog, not the rescue organization. I hope the government will take this into consideration, because it seems to be a valid concern. I hope the government is listening, although I note that they haven't been listening to many of the presenters who have come before this committee.

The Chair: Further questions and comments?

Shall the amendment carry?

Mr. Kormos: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.

Can we skip one ahead to number 35? Mr. Tascona.

Mr. Tascona: And I'll be brief. I appreciate that.

We move that section 19 of the act, as set out in subsection 1(14) of the bill, be struck out. This is dealing with the reverse-onus provision. As we've said before, there are legal opinions out there—Clayton Ruby is of the view that this is against the charter. Even though the government's looking to move it to another section of the bill, it's still a reverse-onus provision, and our opinions are on the record for this particular provision.

The Chair: Questions and comments?

Mr. Kormos: I remind Mr. Tascona that there is one solicitor, Mr. Roman, who is going to whip Ruby's ass in any courtroom that he tries to see the government's section 19 defeated in. I'm sure Clay Ruby is shaking, as they say. Ruby's shaking at being challenged by that formidable legal opponent.

This goes right back to the very beginning of these committee hearings. I recall, during the opening comments, expressing serious concerns about section 19. I continue to have these concerns, and we'll get a chance

to speak to this at length, I'm sure, on the next amendment to be considered.

Section 19 and the efforts to clean it up illustrate the fundamental flaw in this government's breed-specific-ban approach to vicious dog bites. If it were as clear-cut as government spokespeople would have the people of Ontario believe, and if it was as simple as, "Well, a pit bull is a pit bull; everybody knows that," then you wouldn't need any of section 19. It would be a simple matter to demonstrate that a dog is a pit bull. If it was as simple as spokespeople for the government would have us believe, you'd have justices of the peace taking judicial notice of the fact that a dog is a pit bull. If it was so obvious, and if it was like identifying a Chevrolet versus a Honda—perhaps assembled in Ontario, but not manufactured in this province—or a Chrysler, then you wouldn't need section 19 or any of its variants. If it were as simple as saying, "Well, look, clearly this is made of glass, and this is made of paper," then you wouldn't need any of the whoops sections. Really, this is a whoops section; you put the cart before the horse.

Interjection.

Mr. Kormos: Yes. You put the cart before the horse. You said, "Oh, yes, set up this press conference for Mr. Bryant, and we're going to"—what was the line? "Pit bulls banned, pit bulls banned." Then, all of a sudden, somebody said, "Whoops, this pit bull thing is a little bit of a hurdle. We've got to go to our best legal minds to overcome this little obstacle here in this pursuit of pit bulls." I've witnessed whoops sections in bills from governments of all political stripes here. Again, it's just so apparent when all of a sudden somebody says, "Gosh, it sounded like a good idea at the time, but, gosh darn, we're going to need this presumption section to even have pit bulls deemed."

We know that references to the United Kennel Club or the American Kennel Club or the Canadian Kennel Club or the American pit bull breeders association don't give the government much comfort, because those groups don't recognize pit bulls as a breed.

Michael Bryant is certainly not going to make much of a career as an expert witness identifying pit bulls. He won't be out there signing the certificates, even if he should become a veterinarian. He blew that line-up, and it was documented—the horrors of videotape.

So section 19 is a revelation of the government's ill-designed response to some very serious events in the province; to wit, attacks by vicious and bad dogs and, correspondingly, undoubtedly bad owners, and I will be joining with the movers of this motion.

I look forward, I tell you, to discussion of the next amendment. This will be the source of almost as much embarrassment for the Ministry of the Attorney General as Mr. Bryant's line-up and his ID of a—what was it? I don't know if it was a cocker spaniel or a little poodle that he called a pit bull. I can't remember.

The Chair: Further questions and comments? Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.
Let us move back to page 34.

1610

Mr. Zimmer: I move that the heading preceding section 19 of the act, as set out in subsection 1(14) of the bill, be struck out and the following substituted:

“Identification of pit bull

“19(1) A document purporting to be signed by a member of the College of Veterinarians of Ontario stating that a dog is a pit bull within the meaning of this act is receivable in evidence in a prosecution for an offence under this act as proof, in the absence of evidence to the contrary, that the dog is a pit bull for the purposes of this act, without proof of the signature and without proof that the signatory is a member of the college.

“Immunity

“(2) No action or other proceeding may be instituted against a member of the College of Veterinarians of Ontario for providing, in good faith, a document described in subsection (1).

“Onus of proof

“(3) For greater certainty, this section does not remove the onus on the prosecution to prove its case beyond a reasonable doubt.”

The Chair: Questions and comments, if any?

Mr. Kormos: You know, Mr. Zimmer, this just gets worser and worser, don't it? Most of us are familiar with similar kinds of sections in provincial and, quite frankly, federal legislation. I believe under the provincial offences statute that people are prosecuted for not having motor vehicle insurance. There, again, is permitted, as evidence of the fact, I believe, a sealed form indicating there's nobody on file. However, look what you've done here, look carefully: “is a pit bull within the meaning of this act.” It's one thing to create this short form, this abbreviated process for providing evidence as to a hard fact, but you are purporting to provide this shortcut of a veterinarian. What are you calling upon him to do? You're calling upon him or her to interpret the law.

Do you see what I'm saying? It's one thing for a veterinarian to be called upon to say, “This is a dog.” That's within the veterinarian's field of expertise: “This is a male dog”; “This is a female dog”; “This is a spayed dog or neutered dog”; “This is not a spayed dog or neutered dog.” But when you call upon the veterinarian to state that a dog is a pit bull within the meaning of the act, you're calling upon him or her to exercise a role that, unless they're—I was going to say a lawyer—a good lawyer, a trained lawyer in this area, they have no business doing. It's like asking me to give a conclusion

that involves applying engineering principles. I am not qualified; I'm not an engineer. You're asking a veterinarian to reach a legal conclusion. You are usurping the function of the court. This section is even weaker than the section 19 that it replaces, because there you're making it clear that the fact of alleging then triggers a presumption, probably not too solid a ground to operate from. But here you're going one further: You're asking a veterinarian—the reason you're asking veterinarians, of course, is because they are professionals—to determine whether or not, and then declare, a dog is a pit bull within the meaning of this act. You have created, in your definition section, a labyrinth that judges will have to tour before they can make that finding. This is a finding that the judge has to make.

Let me put it this way. You know, Mr. Zimmer, because you're a lawyer—it was your choice—that people are called upon to give expert evidence, and you know that the courts have ruled that lay people are entitled to give some opinion evidence. Again, that's well-known. But most opinion evidence requires that that person be qualified as an expert in the field of the opinion that they're asked to give. You're asking a veterinarian to give a legal opinion, because you're specifically saying that that veterinarian is giving written evidence, not just that the dog is a dog, or, if it were possible, that the dog is a pit bull, but that the dog is a pit bull within the meaning of the act. You have created a set of standards in the act—because the pit bull is an artificial thing, so you need that definition section. The pit bull is an artificiality.

I almost want to vote for this to make sure it passes. I do. But I think that's pushing it a little far.

You've supersized your old section 19. I haven't talked to Clay Ruby, the well-known criminal lawyer, lately. I don't know whether he's aware of this amendment. But if affluent, aggressive and talented criminal lawyers are capable of being ecstatic about the prospect of chewing up and spitting out bad legislation, Mr. Ruby is bouncing off the walls right now.

I want to address one other aspect of this.

Mr. Zimmer: Were you here for Mr. Roman's testimony?

Mr. Kormos: I've made reference to Mr. Roman. Yeah, he's going to kick Ruby's ass. You know that. Gunslinger Roman is going to whup Ruby; no two ways about it. He's going to make him cry. That's what Mr. Roman is going to do.

Mr. Zimmer: A battle of the giants.

Mr. Kormos: The other issue here is the College of Veterinarians of Ontario. I presume that's what makes a vet a vet: you belong to the College of Veterinarians.

This seems to be last-minute sort of work. I don't want to cause him to have a swollen head, but I suspect that Ruby's announcements about the bill may have prompted your new section 19. But did you consult with the College of Veterinarians of Ontario? We certainly didn't hear from them during the course of these committee hearings and their willingness to participate in such a way. I quite frankly wish that we could reopen the hear-

ings, because I don't know what the ethical standards are, for instance, for veterinarians. We had some suggestion that a vet was loath—and whether this was because of an ethical responsibility or because of that individual vet's personal view—to put down a healthy dog, loath to euthanize an otherwise healthy dog. Are you going to be able to get ethical vets?

Again, nobody is quarrelling with the fact that there's a point at which a bad dog has to be put down. I don't care what the breed is. None of the people who appeared before you disputed that. That's one of the tragic consequences of bad breeding and bad ownership. But if an ethical vet—because I don't know the answer to this—cannot put down an otherwise healthy dog, I don't know where you're going to find the vets who are going to do this.

1620

It seems to me that you should have some collaboration with the College of Veterinarians of Ontario, because I can tell you this: Down where I come from, the veterinarians are pretty busy people. When they're not treating animals for fees, they're treating them free. Down where I come from, where vets do domestic animals as well as farm animals, because we've got farmland, there isn't a defence lawyer worth his or her salt who isn't going to call the vet to cross-examine him or her, and Mike Martin will be the expert witness. Do you remember Mike Martin, who's had six different vets? You weren't there, Mr. Racco. You should have been. It was a humorous indictment of the government's breed-specific ban plan.

Where are these vets? Think about it: Charge laid; vet signs a certificate. There isn't a defence lawyer worth his or her salt who isn't going to subpoena the vet. I think Mr. Tascona may be able to shed some light on this. I don't know whether he agrees or not. I suspect he does. That vet's going to spend a day in court. In criminal court, as you know, there are no provisions for witness fees like there are in civil court when you're subpoenaed by the defence. I don't know if crown attorneys' subpoenas pay people.

These vets, then, are going to have to be vets who work for the province, who have an inherent conflict of interest. What are you going to do, put vets on the road and have them travelling around from town to town? Are you going to have the dogcatcher—my poor, beleaguered animal control folks down where I come from—picking up somebody's little cockapoo there, and the vet's going to drive from wherever that vet is down to Pelham or Welland or Thorold or Port Robinson? Because he or she is going to have to look at the dog. I'll bet you dollars to doughnuts it won't take six months before it's discovered, after cross-examining some of these vets, that the vet may not have actually seen the dog. What does that do to his or her evidence? This is a weird, wacky, woolly, bizarre response to the problems you have with section 19.

Do you understand what I'm saying, Chair? The logistics of the vet attending to the animal, and then, oh,

what a delicious cross-examination, with all of the usual tools and tactics to discredit that vet and with the vet having to admit at the end of the day, if he or she is a vet—we've heard from a whole whack of them—that, well, in the total scheme of things there is no such thing as a pit bull.

Mr. Zimmer: You're repeating yourself ad infinitum.

Mr. Kormos: That's OK. I've got 20 minutes to do it, Mr. Zimmer.

You see, the problem is, people were repeating over and over again the need for legislation that would penalize dog owners if their dogs bit. People were repeating over and over again the need for legislation that would require the spaying and neutering of pet dogs, and they repeated it over and over again for a lot longer than I'm going to repeat this, and you still didn't seem to get it.

I'm looking forward to Mr. Tascona's evisceration of this amendment. I'm looking forward to Mr. Tascona deconstructing this amendment and giving it the treatment that it deserves. I've addressed two particular areas. He may well provoke observations on my part. This is incredible, this is really incredible—

The Chair: I'm giving you your three-minute warning.

Mr. Kormos: Thank you, Chair.

For the life of me, I've never seen anything like it.

Mr. Tascona: I just want to comment on this. It's been on the record earlier in terms of this particular amendment. I have to admit that when I saw this, I was initially just totally surprised, and then that moved toward a sort of amusement, and then I started looking at how you deal with this from a practical point of view, in terms of this identification of the pit bull issue. Aside from presenters talking about responsible dog ownership and how you should do it, and the measures we have and the problem of the enforcement of the Dog Owners' Liability Act, the identification of what a pit bull is was sort of the thrust of the hearings. So you come up with this provision.

It's really quite amazing, because all you're going to do is delay the court proceedings, and you're denying a right, a statutory right, to call a particular expert. This is what it is: You've got an expert that the crown has; they're going to hand in their document and say, "This is our document. This proves that this is a pit bull." In terms of due process, this is almost offensive, if not laughable.

In any criminal proceeding, you're going to have the crown's expert witnesses and you're going to have the defence's expert witnesses. What you've done here is that the crown's expert witness is a piece of paper that, on its face, is conclusive evidence of the issue that you're trying to deal with—apart from the fact that you'll be dealing with whether there was a bite or an attack or a menacing behaviour—the conclusive issue, because you knew that this is where your Achilles heel was.

The dog owner has no statutory right to call the vet whatsoever; it's not in there. You normally have a provision, when you're dealing with medical reports under the Evidence Act, that you do have a right to call

that individual who prepared the medical report. You haven't even done that here. What you're going to deal with here is that you're going to have this piece of paper. If I were dealing with this as a defence attorney, I'd be saying to the court, "I want to examine this individual." The court is going to have to grant me an adjournment so that I can have this individual attend court, probably at my client's own expense.

So you're going to have a delay for who knows how long, because the court time is so precious that you may not be looking at it for many months. Where is that dog going to be in the meantime? It's going to be in a dog pound just waiting for this, because you have a right of due process to examine any witness, especially an expert witness who is dealing with the essential issue that's before you in terms of identifying a pit bull. You have a right to cross-examine. Why? Because you want to make sure the opinion is valid, and you want to make sure the person has some expertise in the area that they're commenting on, and you want to make sure that the expertise they're offering is valid.

What you're doing is you're technically trying to deny this, but a smart lawyer is going to basically say, "Listen, I want an adjournment. I want to examine this individual. Call this individual." There's your court delay time. We told you about this earlier, the court delay time, which my friend Mr. Miller—in the first five years of the Dangerous Dogs Act, the court delay time and the kennel time was I think in excess of £10 million, in terms of costs.

I don't know why you brought this provision through. On its face, it is really a denial of due process. At the same time, if the judge says, "No, I'm not going to let you call this individual"—though I think that would be highly improbable—you'd be calling your own expert witness, if this person comes in and says, "Listen, I want to have my own expert here to testify. I need another court delay because I didn't know what this individual was going to say. Now that I know what this individual is going to say, I need another court delay so that I can bring in my own expert witness so I can deal with the evidence of this situation." So you're going to be able to bring in your own witness. You've got the battling of expert witnesses. That's how it works in a criminal proceeding and that's how it's going to work here.

It's not going to be something that is going to make the process any simpler. It's going to delay the process, and I don't think it's going to result in your achieving anything more than court delay time and a very litigious situation. It's going to be a haven for lawyers who want to get into this particular field. Why wouldn't you want to? It's going to basically be totally litigious and a lot of court time.

1630

The other part of it is that you go back—and we talked about the standards of proof. Now you come in with, "For greater certainty, this section does not remove the onus on the prosecution to prove its case beyond a reasonable doubt," which totally conflicts with the previ-

ous amendments you had with respect to the trier of fact being put to a civil standard of proof.

To me, it's just totally confusing, because I don't know when the judge is going to have to make that decision of whether they want to deal with this case beyond a reasonable doubt. Is that dealing with the expert evidence? Is the expert evidence put to the test of a reasonable doubt in terms of this identification issue? If that's what you're talking about, the identification issue is a test of reasonable doubt.

The other findings of fact with respect to whether there was a bite, whether there was an attack, whether there was a menacing gesture is going to be put to a civil test. So you're going to be dealing with the proceedings in terms of the findings of fact on the dog's behaviour being subject to a civil standard, and the identification of whether it's a pit bull is at the criminal standard.

It really poses the question, in terms of the end of the case, what does the crown have to prove? Reasonable doubt in terms of getting their conviction? I don't know. That's sort of an unanswered question in terms of what they have to prove at the end of the day. I guess a good crown will figure that out, but I can tell you, it's going to be sending mixed signals to the legal community and to the public as to what will really happen once you get into that courtroom in terms of what has to be proved.

So this is a very strange amendment. I would have thought that the government—and I think Mr. Kormos is right with respect to their being a little bit fearful of the charter challenge and dealing with the identification of a pit bull and the reverse onus. You're still going to face it, but what you're trying to do here is something that you would not normally see in any situation, whether it's a civil or a criminal procedure, where the expert witness decides the issue which is before the court. You deny them the right, without court approval, of getting the expert witness that is rendering the opinion before the court.

This is something that I can't support, and I think you're just causing a lot of problems in the expense and waste of court time that we were worried about. You've basically nailed it on the head here. You really are going to cause a problem of court delay and make this more litigious than it ever was anticipated, all because you can't prove what a pit bull is. What you've tried to come up with here is an expert opinion that will put you in a position where it really does support your reverse-onus provision, because you really have to go out and get your own expert before you're even going to go to trial. That's without question.

I think my friend wants to make some comments.

Mr. Miller: I'd just like some clarification on what is supposed to be achieved with this: "A document purporting to be signed by a member of the College of Veterinarians of Ontario stating that the dog is a pit bull...." Is this a document that's signed or not signed? I'd like a little explanation on the language there, and also the part to do with "without proof of the signature and without proof that the signatory is a member of the

college". Could you explain those points to me a bit, please, staff? Is it signed or is it not signed?

Mr. Twohig: It's signed, and it's fairly standard kind of language we find from the Criminal Code, other provincial offences. The document's signed. The person who signs it indicates they're a member of the college, and no further proof of the fact that they signed it or that they're a member of the college is necessary if that is the only document received in evidence in a prosecution.

Mr. Miller: So with this, what would stop me from going out and getting a good photocopier and signing something and—

Mr. Twohig: Well, then, you're assuming that the prosecutor is about to tender in evidence a fraudulent document, which I don't think most prosecutors in the province are going to do.

Mr. Miller: OK. It sounds like, based on the testimony of Mr. Tascona, that it is going to be a very litigious procedure. That was the experience in England, as our researcher showed that in England there was kennelling of apprehended dogs, hiring of expert witnesses, legal aid and court expenses, which were all huge expenses, so they did have £10 million of public money spent in just the first four years of the act. That sounds like the road we're going down with this bill. The people who are really going to like this bill are lawyers, but it's not going to actually achieve the goal of protecting the public.

Mr. Kormos: Mr. Zimmer is one lawyer who likes the bill, so there you are. It's proof of Mr. Miller's admonition.

I'm trying to get my head around this. You talked about the Criminal Code and other provincial provisions. Let's say, for example, the Breathalyzer technician's certificate in an over-80 prosecution, because that's kind of similar: There, if it's signed by a Breathalyzer technician, it's deemed to be proof of those Breathalyzer readings, subject to overcoming that. But you see, in that case, it's hard, empirical data; it's not an opinion. In the case of the impaired driving charge, which is an opinion, and quite frankly one that can be expressed by the police officer although the actual finding is done by the court, a police officer is entitled to give his opinion as to whether or not Person A, B or C was impaired, but nobody would ever contemplate allowing that to happen by certificate.

In the case of the registrar of motor vehicles—I'm just trying to think of illustrations—the registrar can, under signature, seal, whatever, produce someone's driving record. But that isn't somebody's opinion as to whether or not you went through that stop sign. That's hard data: "This is what we have on record by way of convictions under the Highway Traffic Act for Person A or B."

You surely can't use a certificate from anybody to say, "In my opinion, this guy was driving dangerously." That requires real, live evidence because it's opinion evidence. The dilemma is this: It's in and of itself difficult for an expert, because you have to be an expert before you can give an opinion, to say this dog is a pit bull, so the government needs the definition section. But then you

take the opinion beyond just the opinion as to whether or not this dog is a pit bull or a cocker spaniel or a poodle, whatever, but whether or not within the meaning of this act the dog is a pit bull. So there you have an opinion once again, and I went through this.

I recall the examples you make reference to in both provincial and criminal statute where certificate evidence is permitted, but I'm not aware of any of them. I could be wrong and if I'm wrong, please say so, because if you don't, the people over there will. They've been chomping at the bit for an opportunity to say I was wrong. But unless I'm wrong, certificate evidence, this abbreviated provision of evidence, is always with respect to hard data, to empirical data, not to opinions. In the case of the person who is charged with driving without insurance, I don't remember the specific details but it's a letter saying, "We do not have this person registered with our company as an insured." So it's hard data. It's not, "Well, in our opinion, he doesn't have insurance." They're saying, "No, we do not have any records of him having insurance with our company."

So you have a bit of a difference here. You have a bit of a gap. Far be it for me to tell the government how to write its legislation, but you know what this illustrates, Mr. Zimmer?

Mr. Zimmer: No.

Mr. Kormos: It illustrates exactly what's been said about the breed-specific ban and the inherent problems. Joe Tascona is right: court time, prosecutors, justices of the peace, defence lawyers, all sorts of other people—there will be experts for hire all over the place, on one side or the other—are going to be consuming incredible amounts of court time dealing with what is or is not a pit bull when the resources should be spent, because we may or may not know what a—you don't have to write definition sections to know what a vicious dog is, or to know what a dog that has bitten is. You don't need elaborate definition sections with all sorts of machinations and opinion evidence.

1640

If you're serious about getting out there and getting the dangerous dogs off the street, you don't waste time like this in courts that are already exhausted. You know this full well, as the parliamentary assistant to the Attorney General. There's been a long-time cusp of crisis in courts, in terms of time before trial, because of court backlogs.

This is exactly what people have been saying about the breed-specific ban, especially in the instance of pit bulls. Because if there were such a clear-cut thing as a pit bull, like there is a Dalmatian, you wouldn't need the elaborate definition section, and you wouldn't need these wacky presumption sections.

So I hear you, counsel, in terms of saying, yes, there are other examples. But I'm not aware of an example that allows opinion evidence to be given by certificate. I used the over-80 impaired driving as an illustration. I used the driving without insurance as an illustration. I used the driving record—or the criminal record, for that matter—

from CPIC or whoever it is who provides the criminal record.

But God bless. Don't heed the concerns expressed by people on this side. Please, forge ahead and disappoint the interests of a whole lot of Ontarians. All they want is vicious dogs off the street. Once again, it's clear you're having trouble defining a pit bull. I'm having no trouble defining a vicious dog.

The Chair: Further questions and comments?

Shall the amendment—

Mr. Kormos: Recorded vote.

The Chair: I can't imagine why. Shall the amendment carry?

Ayes

Kular, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare the amendment carried.

Page 36: Mr. Tascona.

Mr. Tascona: I move that section 20 of the act, as set out in subsection 1(14) of the bill, be struck out and the following substituted:

“Regulations

“20(1) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary or advisable for the purpose of effectively carrying out the intent and purposes of this act.

“Same

“(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

“(a) ensuring that municipalities have the resources they require to enable them to provide effective municipal dog control in the interests of public safety;

“(b) providing for the development and implementation of a comprehensive program, including education, training and other measures, to encourage responsible dog ownership;

“(c) providing for the development and implementation of a comprehensive dog bite prevention strategy to encourage dog owners to take all reasonable steps to prevent their dogs from biting persons or domestic animals;

“(d) providing for the establishment and operation of a province-wide dog bite registry.”

The Chair: Comments?

Mr. Miller: I think a big part of this motion looks to Calgary and the success they've had in Calgary. Calgary, as we heard and saw from the submissions that have come before this committee, is the most successful jurisdiction in Canada in terms of dealing with dangerous dogs.

Part of this motion is ensuring that municipalities have the resources they require to enable them to provide effective municipal dog control in the interests of public safety. In Calgary, they've had great success, with a very comprehensive bylaw, in reducing dog bites from all types of dogs, not just the pit bull-type dog. Pit bulls, as we've seen from some other evidence, are not at the top of the biting list; they are something like eighth in most statistics that have been kept. Calgary's bylaw has been around for a long time, and it has been very successful. It has been very successful with a number of controls, especially their licensing regime, where they've been able to require licensing of just about all dogs. I believe the fee is about \$50 per year per dog; less if the dog is neutered or spayed. Through that licensing fee, they've been able to fund a lot of their activities in terms of the enforcement of their bylaw, and their bylaw is quite comprehensive.

Through their bylaw, they've been able, over a number of years, to greatly reduce the number of dog bites. We heard that in 1984 there were 1,842 reported incidents of aggressive dogs and 639 bites. In 2004 the numbers had dropped to 638 reported incidents of aggressive dogs and 279 bites. That was happening at the same time that the population of Calgary has gone from half a million to a million. So the population doubled, and yet the number of bites and incidents dropped significantly. If we're really trying to improve safety for the people of Ontario, we should be learning from Calgary.

We also had information submitted to this committee comparing Winnipeg, which has brought in a breed-specific ban and has had some success, but not nearly as much success as Calgary. This motion will, in part, help support municipalities as well as do a few other things.

I'll let Mr. Tascona elaborate on the other parts.

Mr. Tascona: That's something that was lacking from Bill 132, and I thought, having gone through the hearings and the comments made by experts in terms of dealing with responsible dog ownership, the problems that are being faced by municipalities, the steps that should be taken, that the government would take seriously their approach to dealing with dangerous dogs. As Mr. Kormos said, and I agree, you don't need a definition to define what a dangerous dog is. We also heard of measures about spaying and neutering, in terms of aggressive dog behaviour, and how it is affected by that type of procedure.

Yet, with all the hearings we've gone through, there wasn't anything done other than what the Liberal government wants to do here. In describing what a pit bull is, they want to basically attack. They want to basically deal with a litigation-approach system that is not going to have any new information to assist us in terms of how to deal with specific types of breeds, by having a bite prevention strategy or establishing a province-wide dog bite registry, which was taken out of a coroner's inquest. They don't want to look at the basic information you would want to have to make sure you understand the problem you're trying to address

They also know that there are municipalities not enforcing the Dog Owners' Liability Act. So what do they do? They put together a system that's going to make it even more unattractive for municipalities to want to enforce the Dog Owners' Liability Act by the approach they're taking.

In a court system that is already challenged with respect to court time and people to hear cases, whether they're JPs or judges, what they are also doing is putting in a system that is going to make sure that the courts are brought to a standstill and our dog pounds are going to be full. The basic human measures, in terms of trying to address a problem of protecting the public—they're putting forth a pit bull ban that is not going to deal with current pit bulls but is going to deal with future breeding patterns, three months from when the bill is going to become law.

So what we've gone through here is an exercise in futility. It's almost what we'd call a public relations stunt that the Attorney General has been going through ever since he decided that he wanted to experiment with pit bulls. I thought we would want to try to do something constructive here, yet we're not doing anything constructive here. We're not addressing responsible dog ownership.

1650

My friend Mr. Miller talks about licensing. You could put in a process, in terms of working with municipalities, saying, "Listen, this is a process that we can put forth with licensing; this is how we can help you; this is how we can make sure that we deal with responsible dog ownership through proper licensing," rather than saying, "OK, we're going to put together a process that will deal with enforcement of this pit bull ban."

Once you pass this legislation, and I know you're going to do it, then there's going to be a pit bull attack out on the street, and the public's going to say, "What the heck is going on here? I thought that Bill 132 was going to deal with the issue." The false sense of security, the misrepresentation of what this bill is going to do, is not going to change anything. We may be dealing with the same issue with respect to pit bulls for the next 10 to 14 years.

So what did we accomplish by this exercise? You're refusing to deal with anything that is proactive, refusing to address the problem that we have in front of us. I didn't think anyone was coming forth and saying to you, "Let's change the Dog Owners' Liability Act to make it more difficult to deal with in terms of enforcement." No one ever came to you for that.

What you're doing here is, you've got an Attorney General who has backed himself into a corner and doesn't know how to get out of it. He's trapped. He thinks this is going to change things and he's losing; he's balancing his whole reputation, his credibility as an individual. The Attorney General's role is supposed to be to enforce the law, respect the law, protect the rule of law, and he's putting in provisions to support his experiment of identifying a pit bull that are against the

Charter of Rights and Freedoms. Where is the credibility in terms of misleading the public, putting in provisions that are against the Charter of Rights and Freedoms and continuing with something that is not going to deal with the problem of vicious dogs?

There's been no attempt to listen to the experts and the presenters about what you could do in a constructive way. I have never seen such an outpouring of people, who are concerned about public safety and concerned about animals, offering their opinions. You couldn't have gotten a better forum. Yet you basically have said on the last day of these hearings, because you're dealing with your amendments, "Let's see how we can address the problem, because we're afraid that we're really going to get hammered if this bill passes and it won't stand up to a charter challenge." That's all this is about. You're afraid that it's not going to stand up to a charter challenge.

We're here on the other side, and we're afraid that it's not going to protect the public from the problem they've been led to believe will be solved by Bill 132. That's why we're here: because we wanted to have a better bill to protect the public from vicious dogs. Yet you haven't listened to the presenters and you haven't listened to us. In fact, there hasn't been one amendment that we've put forward today that you've accepted or even looked at. You haven't brought forth any amendments that deal with the issues that were presented to you in terms of how to deal with this problem realistically and proactively. I'm really disappointed.

I was on the city council in Barrie. We dealt with this. When I first read this, and I read our bylaw back in the early 1990s, when I was there, I looked at the act and it was a joke in terms of trying to enforce, in terms of trying to get some meaningful justice for victims. I thought, when we were going into this exercise, that we were trying to get some meaningful justice for victims, yet we're not going to get that.

When Joan Smith came forth in 1987 and said to George McCague, the MPP for the Alliston area at that time, that pit bull bans wouldn't work, that it was going to cause a delay in court time, that it was going to be a waste of court time because you wouldn't be able to identify it, nobody listened to her. What she said was that she was going to try to change the act to make it better, but that never happened. She said the way to deal with it was to go after vicious dogs. We're all in agreement here that we should be dealing with vicious dogs. But we're not dealing with vicious dogs; we're not dealing with irresponsible owners; we're not dealing with the mechanisms that are impeding proper enforcement. We're not listening to the public. You may be listening to your polls and saying, "Oh, the public supports us." The public believes you're going to solve the pit bull problem now. When that first attack happens to that poor victim, people are going to know that you didn't do anything and that this exercise was a charade. The experiment is not going to work.

I hold the Attorney General to his word that he's not going to add another dog to the banned breed list, but we'll just have to see.

Mr. Kormos: I want to tell the parliamentary assistant that the word is very much out there on the street that cats are your next target—tagging, leashing, muzzling. If you thought dog people were adamant, wait till the cat lovers come here to Queen's Park. You've never seen anything like cat lovers at Queen's Park.

As I've had occasion to tell this committee, I come from a small to mid-size Ontario town that went through its budget process like other communities are right now. Annually there's an incredible pressure and tension in terms of funding the animal control operation. Once again, our animal control has to deal not only with urban animals, which includes domestic animals, skunks and raccoons, but it has to deal with rural animals. That's not unusual at all. Even in the hobby farming areas, you're going to experience that. We don't have the animal control officers now to deal with routine animal control matters. We've got a pound run by the humane society, SPCA, that is running a perpetual bake sale—that's how it's done in small-town Ontario—because of the inadequacy of funding, trying to keep that modest-sized pound operating. They just can't keep up. From time to time, communities across this province, like the one I represent, do blitzes on licensing dogs, but those blitzes are as often as not haphazard and catch-as-may-can. In the summertime, a bunch of students are sent out there to go through neighbourhoods. Of course, dog owners who are scofflaws and have no interest in licensing their dogs have a million and one ways of avoiding licensing their dogs and paying the annual fee.

The Attorney General, Mr. Zimmer's boss, came here last week and tried to make the news by talking about new monies flowing to animal control in municipalities across the province. That was after Mr. McGuinty's other friend, Mr. Rae, talked about the need for \$1.3 billion—what was the amount we need in post-secondary education?

Interjection.

Mr. Kormos: Billions of dollars. That was after Mr. Smitherman talked about the need for monies for health care, notwithstanding 800 nurses and hundreds of other health care workers losing their jobs.

So I don't buy the money argument that Mr Bryant, the Attorney General, makes. This is an expensive process. It's labour-intensive. What makes it most labour intensive is the breed-specific ban, not just in the courtroom now, as we were talking about last round, but out there on the street.

Preventive measures are far less expensive and far more effective because they deal with it before the fact. We heard about programs—because kids are especially vulnerable to dog bites—educating kids on fundamental dog behaviour and how to avoid dog bites. We heard about leashing. We heard about not leaving a dog tethered 24 hours a day, seven days a week, because that dog is more likely to bite. I presume that meant a dog of any breed. We learned about muzzling and how that was conceivable, but in many cases an impractical approach. We learned about neutering and spaying. But these sorts of things can be done far less costly than enforcement

after the fact with far more effective results, and there hasn't been, notwithstanding the pitch made by Mr. Bryant, a commitment of significant monies to communities so animal control officers can get involved in enforcement of this statute, should it become part of the Dog Owners' Liability Act. You've missed the boat.

1700

We are interested in seeing a significant reduction in vicious dog attacks. Like Mr. Tascona, I predict that, even should this bill pass—and I predict that the bill will pass—there will not be a sufficiently impressive reduction, if any, in vicious dog attacks to leave people feeling comforted by the bill. In the next year or two years, even in the next election campaign, I bet you there may be some Liberals—and I'm admonishing some of the backbenchers here: Don't buy into the centralized stuff—the stuff they send you from central office—because it will have, "We effected North America's toughest pit bull ban." Yes, and the family that gets that pamphlet, whose kid was just bitten by any number of dogs, is going to say, "Yes, well, thanks but no thanks." So that central stuff coming out of the main Liberal Party office, be careful of it. Read it carefully before you use it in your own campaign. You've got to canvass with your own image and your own message, not the central party's—free advice, worth probably as much as you're paying for it.

Mr. Zimmer: Thanks for your advice.

Mr. Kormos: The amendment before us doesn't compel the government to do the things that the regulations will permit it to do, but it permits the government to do it. The government clearly doesn't want even the permission to contemplate these things, which reveals this exercise as pretty much a fraud on the people of Ontario. We're wrapping up the amendments, we're going to get into clause-by-clause and, as I say, I can read the government members here. I know where they're coming from. You don't gotta be, as the guy says on the cooking channel, a rocket science to figure that one out. That's a Portuguese-American guy, by the way. But I just shake my head.

There will be another piece of legislation. There have been quite a few of them in the recent past—and, quite frankly, some did come from the last government too; some probably came from the government before that—that are statutes in law but have no real impact out there on the street. You know, you could've created a province-wide regime for dog management, amongst other things. You could've created a provincial requirement for licensing, tagging/registration, so that every municipality had the same standard. I appreciate your observation that the legislation that imposes the higher standard is the one that prevails, but you could've done that. You could've created uniform licensing and tagging, not with a view to revenue generation but with a view to being able to monitor what dogs are out there, where they are, what the numbers are and, first and foremost, to acquire some real, made-in-Ontario dog-bite data. We're never going to address this issue unless we get that data. I am amazed at the lack of logic and the rejection of

anything akin to a scientific approach that's been utilized by this government in the course of pursuing this legislation.

I look forward to the bill being debated for third reading in the House. I just want to tell the government again, you need some unanimous consent to fix periods of time in committee of the whole to bring some amendments to this bill, to toughen it up the way both opposition parties have recommended. We want to toughen this bill up—I can't speak for the Conservatives, but I'm telling you, I'll accommodate you; the New Democrats will accommodate you—neutering and spaying, a regime for province-wide tagging and getting rid of this silly courtroom diversion, this nonsense that's going to take place, courtroom after courtroom, occupying scarce courts and JPs' and prosecutors' precious time in the mass of litigation over identification.

Let's call the question here, Chair.

The Chair: Further debate? Hearing none—

Mr. Kormos: I'm tired of the Liberals dragging this on to the point where all of us are becoming fatigued.

Mr. Tascona: Recorded vote.

The Chair: Shall the amendment carry?

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the motion lost.

Shall section 1, as amended, carry?

Mr. Tascona: Hey, what about 37?

The Chair: That's in section 2. So we're finished with section 1.

Mr. Kormos: On a point of order, Mr. Chair: There's another amendment; that's fine. Since there's only one more amendment, I think, really, it makes sense to move on to that amendment. This isn't time-allocated. As we proceed, section by section, we comment and question on those sections, as amended.

The Chair: We have completed the amendments for section 1. It is now appropriate to call the question and to ask whether section 1, as amended, carries.

Mr. Kormos: No, it's appropriate to ask for questions or comments on section 1, as amended.

The Chair: You are correct. Questions and comments on section 1? Mr. Kormos.

Mr. Kormos: Thank you. I wouldn't have felt compelled to do this except, with the engagement, it flowed irresistibly.

Mr. Zimmer: Is there any chance we might take a five-minute break before you wind up again?

Mr. Kormos: Sure, why don't you make it six and a half?

Mr. Zimmer: Can you give us some estimate—not to tell you what I want to do, but I can—

Mr. Kormos: At our age, another couple of minutes wouldn't hurt.

The Chair: This committee stands in recess until 5:15.

The committee recessed from 1707 to 1716.

The Chair: Again, after a very generous five minutes, let's come back to order, please.

Discussion on section 1, prior to asking whether section 1, as amended, will carry: Mr. Kormos.

Mr. Kormos: Very briefly, Chair, New Democrats are committed, have demonstrated that and have been very clear about the need for this province to have tough, effective vicious dog legislation.

The government has missed the boat. We're disappointed that our amendments were not acceptable to the government, not one of them. They were amendments that were designed to make this bill tougher, more effective, and to truly create a regime that protects people from vicious dog attacks. I will not be supporting section 1 of the bill.

Mr. Tascona: I'll just say for our party, the official opposition, that we won't be supporting section 1 for the reasons that have been all too frequently stated.

The lack of responsible dog ownership is the problem in this province, and the measures that we put forth in our amendments would help address that. What people want is protection against vicious dogs. They don't want legal wranglings and court delays. They want justice, and they want justice quickly. This is not going to accomplish that. There are going to be pit bulls on the streets after this bill is passed and they're not going to be any less dangerous than they already are in the hands of irresponsible dog owners.

We can't support this bill. It's not dealing with vicious dog owners. It's not putting forth a very progressive, responsible approach to dog ownership in this province, which is much needed, and the data that is necessary to make sure this works.

I'll just be blunt about it. I think the Toronto Sun, in their editorial—Mr. Goldstein in his approach—said that the Attorney General was lazy in terms of what he was trying to do to solve the vicious dog problem, and he is lazy. This is a lazy man's approach to dealing with a serious problem, and basically the stunts that he's put forth haven't solved the problem. They've exacerbated it because he's putting a perception out there that the public feels that he is going to address the problems of dangerous dogs through pit bulls, when in fact he has done nothing.

1720

The Chair: Shall section 1, as amended, carry?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare section 1, as amended, carried.

Section 2: We have one proposed amendment.

Mr. Tascona: I move that subsections 2(2) to (5) of the bill be struck out.

This is dealing with the Animals for Research Act in specific reference to the pit bull breed extinction. Those are all the comments I have.

The Chair: Further questions and comments?
Shall the amendment carry?

Mr. Tascona: Recorded vote.

Ayes

Kormos, Miller, Tascona.

Nays

Kular, Peterson, Qaadri, Racco, Zimmer.

The Chair: I declare the amendment lost.
Shall section 2 carry?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote. Shall section 2 carry?

Mr. Kormos: As amended.

The Chair: There were no amendments to section 2.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare section 2 carried.
There are no amendments to section 3 or section 4.

Mr. Tascona: Recorded vote.

The Chair: Recorded vote.
Shall section 3 and section 4 carry?

Mr. Kormos: I assume there's no debate on either of those then.

The Chair: Is there any discussion on section 3 and section 4? Shall section 3 and section 4 carry?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare section 3 and section 4 carried.
Shall the title of the bill carry?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: I declare the title of the bill carried.
Shall Bill 132, as amended, carry?

Mr. Kormos: One moment. That warrants debate.

The Chair: Mr Kormos.

Mr. Kormos: Once again, New Democrats want to make it clear that the breed-specific ban is not a solution. It is yet another illustration of the politics of diversion by a Liberal government that is floundering in the polls, that lacks an agenda, that is no longer known as the promise-breaking government but as the government in drift and the government that has betrayed Ontarians when it comes to health care, betrayed Ontarians when it comes to controlling the price of electricity, betrayed seniors across this province when it comes to their ability to live in their own homes in their senior years. This is a government that has not served victims of vicious dogs well at all by the political diversionary tactic of breed-specific ban, which sounds good at the moment but regrettably lacks the capacity to deliver safer streets for the people of Ontario. New Democrats will not support this bill.

The Chair: Thank you. Further questions and comments?

Mr. Tascona: The official opposition is on record for supporting vicious dog legislation changes and also legislation that will not put in the public's mind a false sense of security. Our leader John Tory is on record for that, and I would only say that we've missed an opportunity here. The lazy-man approach to dealing with dog enforcement and dangerous dogs is not going to solve the problem.

We had an opportunity here. I think the last time that this was even looked at was by Joan Smith, the Liberal Solicitor General back in 1987, when they were dealing with this issue and put together a committee of ministers to deal with this legislation. It didn't go anywhere. It didn't go anywhere, but that was a problem of that particular government.

Here we are, 17 years later, with an opportunity to deal with what is really a problem with respect to dangerous dogs going after young children. During the course of these proceedings, we had situations—the one that happened, I believe, in St. Catharines or Niagara Falls was a German shepherd that attacked a four-year-old and then bit the people who came to protect that child. We had other occasions where there were vicious dog attacks.

So what we've accomplished here as parliamentarians is nothing in terms of making sure we have more responsible dog ownership, making sure that we have measures in place to make sure that we can protect the public, and measures that can make cities do their job. After all, they're enforcing it. They have no more tools than they've ever had, and their reluctance to enforce the Dog Owners' Liability Act isn't going to be enhanced by us passing Bill 132. In fact, I think you're going to find it being diminished because of the court time that's going to be wasted.

In fact, what the Liberals did by removing the part IV option in my riding and in other ridings, and the money

that was coming from the part IV option with respect to highway traffic offences, is put more pressure on police, but it also now increases court time usage, because now those offences have to be prosecuted. So where are we going to find the court time? Where are the municipalities going to find the bylaw enforcement officers and the court personnel to do the job that they now have to do with the Highway Traffic Act, which they didn't have to do before? Now we're going to put more onerous provisions on them in terms of dog bylaw enforcement because of this legislation.

It's a missed opportunity. I don't blame the members across the way for following the orders that they have to follow. It was the Attorney General's file to produce good legislation. I think he missed an opportunity. I think the public's going to know it and, unfortunately, the person who is the next victim of a vicious dog attack, which could be any type of dog brought forth by the criminal element or from an irresponsible dog owner, is going to know that nothing is there for them in terms of protection.

The Chair: Thank you. Further comments?

1730

Mr. Miller: I'd just briefly like to say that it's really unfortunate that we haven't used all the information from all the people who have come before this committee over four days. I have to say that there has been more interest in this issue than in many that I've been involved with on committee. We had hundreds of people come before us, and some travelled long distances. If you think about the expert travelling in from Texas, the people who were here for all four days, and all the various veterinarians, humane societies and animal control officers, it's really a shame the government isn't taking some time to actually bring about good legislation that is going to make a difference. We got a wealth of information and Mr. Kaye, the researcher, worked overtime to delve into various other jurisdictions like New York state, California and Calgary. There's a lot of information we now have, and if we just took the time, we could make a much better law.

My feeling is that the law that is being created is one lawyers are going to love. They are going to be about the only ones who are going to benefit from this law. It's going to create a false sense of security. The government may get a short-term bang and boost from passing this bill, but it's really misleading the public and making the public think there is some sort of protection from dangerous dogs, when in fact they really aren't bringing in much protection at all.

We've been given a wealth of information about things that really work: dealing with dog owners, educating the public, perhaps having some control on breeders, dealing with backyard breeders and requiring much more licensing. As I mentioned before, Calgary has 95% licensing whereas I think in Ontario it's far lower than that. We've been given lots of suggestions that would really make a difference: neutering and spaying all the animals that aren't purebreds or show dogs, as

suggested in one of the amendments today. If we took the time and actually went through all the information we were given, we could probably come up with a law that would do a lot of good in this province.

It's just a shame that, for all those people who came before this committee, basically it's been a sham, a joke. You didn't listen to the people who came before this committee and that's a real shame. In the long run, I think that will be borne out as this new law is shown to be very ineffectual. It's disappointing that we haven't listened to all the people who came before the committee.

The Chair: Another comment?

Mr. Kormos: In closing, before leaving this committee process, I really want to make special mention of the parliamentary assistant. I can't for the life of me imagine what he did to warrant having this dropped in his lap. The Attorney General does all the glossy press conferences in rooms packed with media and scores the political brownie points, if there are any to be scored, and then Zimmer has to run with the ball. You heard me earlier commend Mr. Zimmer for staying on script, even when I'm sure his intellect told him not to. That's one of the challenges a parliamentary assistant has to meet dead on, and that is that their best opinions mean zip. Their best judgment is for naught because it's about doing—well, you talk about dogs. There is the old RCA Victor logo with the Victrola and the little dog—I think that's a banned breed, or will be, under this government—"His Master's Voice." That's the role of a parliamentary assistant. It's a unique one; it's a peculiar one. It's akin to self-flagellation, I'm sure, in terms of the quality of life. I want to commend him for resisting what I'm sure his intellect told him many times, and I'm sure what his conscience suggested to him on even a couple of other times. I applaud him for stewardship of a really hollow bit of legislation.

Rest assured that this bill was announced by Bryant, but it's Mr. Zimmer who is going to be called upon to explain its failure. Success has a thousand parents; failure is always an orphan.

The Chair: Thank you. Mr. Zimmer?

Mr. Zimmer: I was going to make a long speech and use up my 20 minutes, Peter, and I thought, what could I say? I think I'm just going to quote from an editorial in one of Toronto's major newspapers this past Sunday. The headline is, "Bryant Must Hold Firm on Bill to Ban Pit Bulls." I'll just quote a couple of pieces from it and perhaps a reference to your party—and your party also:

"There have been too many such stories for too long"—that's pit bull attacks—"and too often involving innocent victims who were in the wrong place at the wrong time.

"That's why it is imperative that Ontario Attorney General Michael Bryant and the Liberal government follow through on their commitment to ban pit bulls in the province....

"Bryant is on solid ground in his quest to ban pit bulls....

"Last fall ... a sensible bill" was introduced "that would allow current owners to keep their pit bulls, although they must be muzzled and leashed in public and be neutered or spayed.

"...Liberal MPPs should stick with their plan to pass the legislation quickly.

"Such action is critical because a community has a right to protect itself against potentially dangerous animals—poisonous snakes, lions or, yes, pit bulls."

Then a little bit of gratuitous advice for my friends in the Conservative Party and the New Democratic Party: "The Conservatives and New Democrats oppose a breed-specific ban. They should reconsider their stand."

I will just close on that note.

Mr. Miller: I can't have the parliamentary assistant use this example of the editorial, which I was astounded to read in the Star, without mentioning that I wish he would read from the letter to the editor that came the next day, which was much better written and went through all the various points as to why it made sense to not support breed-specific legislation. I gather from what he is saying that they make their laws based on what's in the media, and that certainly seems what this law is geared toward.

The Chair: Let's just go in the rotation here. I think Mr. Racco has been dying to—

Mr. Racco: Mr. Chair, I think it's fair that those of us who wish to speak can speak, and then you can go around.

No topic, no bill, no issue that is controversial will ever be supported by both the government and the opposition parties, because it's controversial. So I'm not surprised that both the opposition and the third party are not supporting it. One thing is clear, though: Millions of Ontarians do support this bill. It's clear that people who have been affected—who are usually the ones we want to make sure are not affected again in the future, and others—certainly are supportive of the bill.

No bill will ever be perfect. There are always ways that we can improve things. But surely there is significant support for this bill, not only from the people who support the bill but also people who are involved in enforcing the law. Therefore, I think we should see the merits. It's nice to complain all the time, but I think there are some benefits that can be seen. Those are my comments.

The Chair: Are we at the point of someone wanting the last word?

Mr. Kormos: There's no time allocation here.

The Chair: There is no time allocation. I was merely asking.

Mr. Kormos: One, I appreciated Mr. Racco's observations. I suppose he's right; I should become more

willing to embrace controversy, rather than flee from it and hide from it, as I have during my lifetime.

Mr. Zimmer, your reading of that editorial illustrates what I've been trying to tell you. Did they mention David Zimmer in the editorial? No. It's, "Michael Bryant, Michael Bryant, Michael Bryant." But just watch, when this damn thing blows up in your face, Bryant's going to be nowhere near it. It's going to be, "David Zimmer, David Zimmer, David Zimmer shepherded it through committee and the Legislature." It illustrates and proves my point.

The Chair: Perhaps, then, legislative research, in answer to one of your earlier questions, could find some sources of assertiveness training for you.

Mr. Tascona?

Mr. Tascona: I just want to say I think the people who did present here, and there were hundreds of them, are going to feel that the process didn't work. I think both opposition parties fought for hearings, and for this to come out as nothing happening in terms of protecting people on the street—because nothing is going to happen. The day after this legislation is passed, there will be no changes in terms of vicious dog protection. So let's just get that on the record and spare us any more Toronto Star editorials, please.

Recorded vote.

The Chair: Shall Bill 132, as amended, carry?

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: Shall I report the bill, as amended, to the House?

Mr. Kormos: I suggest that this be put to a vote and ask that it be a recorded vote.

Ayes

Kular, Peterson, Qaadri, Racco, Zimmer.

Nays

Kormos, Miller, Tascona.

The Chair: Thank you very much, one and all. Our business here is done. This meeting is adjourned.

The committee adjourned at 1741.

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Substitutions / Membres remplaçants

Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mr. Kuldip Kular (Bramalea-Gore-Malton-Springdale L)

Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Mr. Joseph N. Tascona (Barrie-Simcoe-Bradford PC)

Mr. John Wilkinson (Perth-Middlesex L)

Mr. David Zimmer (Willowdale L)

Also taking part / Autres participants et participantes

Mr. John Twohig, senior counsel, policy division,

Ministry of the Attorney General

Mr. Abi Lewis, counsel, policy division,

Ministry of the Attorney General

Clerk / Greffier

Mr. Douglas Arnott

Staff / Personnel

Mr. Philip Kaye, research officer,
Research and Information Services

Ms. Mariam Leitman, legislative counsel,
Ministry of the Attorney General



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First Session, 38th Parliament

Assemblée législative de l'Ontario

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Official Report of Debates (Hansard)

Thursday 12 May 2005

Journal des débats (Hansard)

Jeudi 12 mai 2005

Standing committee on the Legislative Assembly

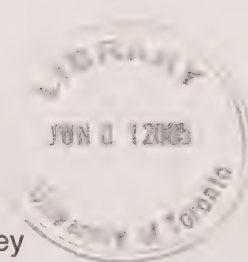
Environmental Enforcement
Statute Law Amendment Act,
2005

Comité permanent de l'Assemblée législative

Loi de 2005 modifiant des lois
sur l'environnement
en ce qui concerne l'exécution

Chair: Bob Delaney
Clerk: Douglas Arnott

Président : Bob Delaney
Greffier : Douglas Arnott



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 12 May 2005

Jeudi 12 mai 2005

The committee met at 1605 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr. Bob Delaney): Good afternoon, everyone. This is the standing committee on the Legislative Assembly. We're here today to consider Bill 133, the Environmental Enforcement Statute Law Amendment Act. Our first order of business is a report of the subcommittee. Mr. Wilkinson?

Mr. John Wilkinson (Perth-Middlesex): I refer to the revised proposal, the report of the subcommittee.

Your subcommittee on committee business met to consider the method of proceeding on Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings on Bill 133 at Queen's Park on the following dates:

—Thursday, May 12, 2005, from 4:00 p.m. to 6:00 p.m.; and

—Monday, May 16, 2005, from 9:00 a.m. to 12:00 noon and 4:00 p.m. to 6:00 p.m., subject to the authorization of the House. Mr. Chair, I can report that the House provided that authorization today, by unanimous consent.

(2) That the clerk of the committee post notice of hearings as soon as possible on the Ontario parliamentary channel and on the Internet.

(3) That the deadline for receipt of requests to appear be 5:00 p.m. on Thursday, May 5, 2005.

(4) That the Minister of the Environment be invited to appear before the committee at 4:00 p.m. on Thursday, May 12, 2005, for 15 minutes to make a presentation and answer questions from the three parties, followed by a five-minute statement by each of the three parties.

(5) That the length of presentations for other witnesses be 15 minutes for groups and 10 minutes for individuals.

(6) That the clerk of the committee distribute a list of potential witnesses received at the deadline for requests to each of the three parties by 10:00 a.m. on Friday, May 6, 2005.

(7) That, if demand exceeds availability of time, then the following procedures apply: (i) each party is to provide to the clerk of the committee a prioritized list of witnesses based on the committee clerk's list by 2:00

p.m. on Friday, May 6, 2005; and (ii) the scheduling of witnesses is to be done, to the extent possible, in rotation and is to be done on the following basis: A (government list), B (official opposition list), and C (third party list).

(8) That if all those who request to speak can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists would be required.

(9) That the research officer provide background information on Bill 133 prior to the start of committee hearings, and a summary of presentations as soon as possible prior to the start of clause-by-clause consideration of the bill.

(10) That the deadline for written submissions be 5:00 p.m. on Monday, May 16, 2005.

(11) That proposed amendments to be moved during clause-by-clause consideration of the bill should be filed with the clerk of the committee by 5:00 p.m. on Tuesday, May 17, 2005.

(12) That clause-by-clause consideration of the bill be scheduled in Toronto on Thursday, May 19, 2005.

(13) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

I move adoption of the subcommittee report.

The Chair: Mr. Wilkinson has moved adoption of the subcommittee report. All those in favour? Opposed? Carried.

ENVIRONMENTAL ENFORCEMENT
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
SUR L'ENVIRONNEMENT
EN CE QUI CONCERNE L'EXÉCUTION

Consideration of Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters / Projet de loi 133, Loi modifiant la Loi sur la protection de l'environnement et la Loi sur les ressources en eau de l'Ontario en ce qui a trait à l'exécution et à d'autres questions.

STATEMENT BY THE MINISTER AND RESPONSES

The Chair: Our first deputation comes from the Minister of the Environment, the Honourable Leona Dombrowsky. Welcome, Minister. You have 15 minutes before us today.

Hon. Leona Dombrowsky (Minister of the Environment): Thank you very much, Mr. Chair. It is a pleasure for me to be here today. I look forward to the opportunity to ensure that Bill 133 is the best it can be for the people of Ontario.

Last October, the Premier announced our intention to introduce legislation to create environmental penalties. We have delivered on that promise with Bill 133. The government has one objective in Bill 133. It is one shared by the people of Ontario and those who care about our environment: We want to reduce the number of spills in Ontario.

Our laws that require polluters to report spills, clean up spills and compensate for losses caused by spills go a long way to providing sufficient reason for many companies to take the necessary steps to prevent spills. However, given the number of spills that still occur each year, it is also clear that threat of prosecution is not sufficient to inspire all companies to take the steps needed to prevent spills. More emphasis on spill prevention is required.

Each year, the ministry receives between 35,000 and 45,000 incident reports from the public. Of these, approximately 3,900 incidents in 2004 were classified as spills. Industrial facilities accounted for 1,062 of those spills. The companies that would be affected by environmental penalties accounted for almost 40% of reported industrial spills in 2004. However, when you consider the type of spills, these companies accounted for nearly 98%, by volume, of all reported liquid industrial spills in 2004. Given these statistics, you can see why we have used a risk-based approach to determine which sectors to target to get real environmental results more efficiently and effectively.

Ladies and gentlemen, I have maps available. The first map is with regard to industrial spills in Ontario communities in 2003-04, and the second map is with regard to spills in Ontario by MISA facilities in 2003-04.

1610

The current system sometimes leaves provincial and municipal taxpayers footing the bill for cleaning up the impact of the spills. We can do better.

Every spill is a failure. It may be a failure of planning or a failure to take the right precautionary measures. It may be a failure to comply with our environmental laws. Not every failure leads to a major crisis, but every failure can be addressed and prevented. That is what Bill 133 is designed to do.

We intend to improve our protection against environmental and human impacts, both in terms of encouraging companies to do more to prevent spills and to ensure fast, effective cleanup when mishaps do occur.

We have heard concerns about some aspects of Bill 133, and we have listened. Some of the concerns are about the structure of the new law: How will it be administered? Who will administer it? What can those who are penalized do if they seek to appeal? Other concerns are from those who say that we've not gone far enough, that we should be doing more to prevent spills rather than penalizing those who do spill.

Many of these concerns emerged through our consultations with stakeholders. We will hear more from stakeholders at these hearings as well, and I believe that at the end, they will be satisfied that the government has listened.

I will address the concerns here today and tell you how we propose to amend Bill 133. I will be tabling a number of motions to deal with these concerns through amendments to the bill, which will be going to the Legislature for second reading.

Bill 133 would increase the tools available to us to bring companies into compliance.

Environmental penalties complement our ongoing abatement, investigation and prosecution work. These environmental penalties are a fast, effective way to ensure that when you spill, you pay. Environmental penalties will encourage companies to take action to prevent spills and to clean up a spill right away. All money collected from penalties will go to a dedicated community cleanup fund and will be used for environmental cleanup purposes only. The maximum environmental penalty for corporations will be \$100,000 per day.

Environmental penalties are administrative penalties, not fines. This is why there will be absolute liability for a spill, should one occur.

Environmental penalties are not a new concept. Civil or administrative penalties are a part of the law in the United States, under federal environmental protection laws like the Clean Air Act, and under state laws, and they exist in other Canadian jurisdictions. In fact, many countries around the world use civil penalties for effective environmental compliance and enforcement.

I have a third map. It indicates the states and the Canadian provinces that use environmental penalties. They would be the coloured jurisdictions on map 3. On this map, all jurisdictions in colour have issued environmental penalties.

If Bill 133 is passed, the government intends to introduce regulations that will ensure that environmental penalties apply to the Ontario facilities covered by the municipal-industrial strategy for abatement regulations.

Presently, there are 139 MISA facilities in Ontario. If passed, Bill 133 will give the ministry and municipalities new powers to seek cleanup recovery costs from companies responsible for spills. Again, this enshrines the principle, "You spill, you pay."

Since environmental penalties are administrative, if a company decides to appeal the penalty, the onus of proof will be on it to show that the spill did not have the potential to harm the environment.

There are those who will claim that the reverse onus provision is a new principle. Clearly, it is not. One of the

most common features of environmental protection laws is that when a company experiences an environmental incident that may endanger public health or the environment, it must report it to government authorities.

This bill's proposal that reverse onus applies to an appeal of an environmental penalty is the next logical step. If there is a spill at a company plant, then the company is in the best position to ensure that the spill is contained quickly, so that it does not violate environmental protection laws. The company can put in place the appropriate monitoring and contingency responses to ensure its discharges remain within legal limits. If the company wants to challenge a penalty that the government has imposed for a spill, then the company is best positioned to demonstrate why its spill did not break the law. We contend that it is good public policy to emphasize spill prevention and expedite the cleanup of a spill, to get it done and paid for as quickly as possible.

Let me outline the motions to amend Bill 133 that I will be proposing. Again, these emerged from our consultations with stakeholders. Our objective is to raise the bar on environmental protection; to have a law that will work better, be fair and, above all, be effective.

The first area of amendments deals with the clarification of some aspects of the bill. For example, to whom will environmental penalties be issued? If there is a spill, in what circumstances will an environmental penalty not be issued? Who can issue a penalty? What if a company tried to mitigate its spill or prevent it? Would such companies get a stiff penalty? I will move amendments to clarify these points. Let me go through them.

We will ensure that only a Ministry of the Environment director can impose an environmental penalty, not a provincial officer. We will clarify that environmental penalties shall only be imposed against the company and not against company officials or employees. The objective is to promote spill prevention and to ensure fast cleanup of spills, not to penalize individuals. A company that receives an environmental penalty will not have that penalty taken as an admission of guilt in a subsequent prosecution.

We will also draft regulations that will ensure that a company's actions to prevent, minimize or clean up a spill will be taken into account when a penalty is considered. While officials will not be penalized, corporate directors and officers still have the responsibility to ensure their corporations comply with the province's environmental protection laws. We will be introducing a motion that will require directors and officers to ensure that corporations satisfy their duty to notify the ministry of spills and to clean up after the spill.

I will also move to amend Bill 133 so it states clearly that a court shall consider the payment of an environmental penalty in determining the amount of a fine. In response to stakeholder comments, we plan to introduce a motion that will require those industries specified in regulations to prepare spill contingency prevention plans.

I hope that, in the time this committee meets, we will hear more constructive ideas from members and depu-

tants. Together we will make Bill 133 a better law, providing better environmental protection for Ontarians. Ladies and gentlemen, spills do happen. If passed, Bill 133 will become law in Ontario, and it will be clear: You spill, you pay.

The Chair: We now have our opening statements from each of the parties.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): Thank you, Minister, for that presentation to kick off the hearings. I appreciate hearing the direction you're putting forward with respect to a number of amendments to this piece of legislation. We have all had a considerable amount of time to work on that, I was saying to Mr. Marchese. You introduced the legislation last October 27, so we've had more than enough time to speak with people about this and about the concept of administrative or environmental penalties.

Also, in spite of the amendments you've described—you make mention of including a requirement for prevention plans; certainly I've heard that request in the Legislature—my concern remains to what extent this bill is useful, or I should say not useful, in the sense that it's only useful after the fact, after the spill has occurred. By taking your spill-and-bill approach, I'm concerned that, even with the amendments, the approach is limited in its effectiveness, because it remains virtually a stand-alone method of deterrence.

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I raise questions: Where is the coordinated, proactive approach to the prevention of such spills in the first place, the same kind of coordinated, proactive approach that was called for in your government's own IPAT report, the industrial pollution action team report, led by Dr. Heathcote?

You responded to that report in August last year. You indicated, "We will be developing an action plan on industrial pollution that will be like nothing my ministry has ever developed before." To date, the approach to Bill 133 seems to be pretty much same old, same old. We're going down the same road. Granted, there are some changes: higher, more immediate administrative penalties. I do consider this still a reactive, adversarial approach. I regret that. I feel it's heavy-handed. It seems to be stuck in the old school: the command-and-control approach to environmental issues.

Your news release on the IPAT report went on to say, "The Ontario government will act on the recommendations in the final report of the industrial pollution action team."

The Chair: Just to advise, you have about one minute left.

Mr. Barrett: We've had a chance to look at these recommendations. I've gone through the IPAT report. Certainly, very quickly, one can read the executive summary. The executive summary of that report does not mention environmental penalties. I am concerned. We know there are some lines further in the report calling for more effective penalties. I'm concerned this legislation ignores the vast majority of your own report, a report

calling for a much more comprehensive, cohesive, preventive approach—something beyond subtracting money, if you will, from the private sector.

I'm concerned that there does seem to be a disconnect. We had a report that called for a multi-pronged approach, contingency plans. It called for economic and other incentives to go beyond compliance. It called for a resolution of jurisdictional confusion. None of that's in the bill.

Mr. Rosario Marchese (Trinity-Spadina): Just for the interest of the committee and the members and the public, I'm not Marilyn Churley. It is obvious, isn't it? She's the critic; I'm not the critic for this. I'm filling in today. So to the rest of you, if I don't have a statement that might be as coherent as you would like, you'll understand why.

I only want to speak to the procedural elements of this that are a bit odd. Normally, we have second reading debate in the Legislature. It gives the critic and others an opportunity to speak to the bill: both its strengths and weaknesses. Then we come and listen to the various participants who are in favour of the bill or opposed to it. On the basis of that, we make amendments—the opposition and the government—and we move forward on the basis of what we hear.

The strangeness of this procedure is that the minister comes here and indicates that there will be a number of amendments in some areas—of course, we don't have a clue to what it is that we're responding to—and I find that particularly odd. I'm assuming that others in the public do, too. We don't have the amendments. We don't know what they are. We haven't heard from the deputants about their views to this bill and to the possible amendments that may be coming.

I just want to say for the record, I find it odd. I'm assuming the public finds it equally strange. Why the government has pursued this course versus the normal course is beyond my comprehension.

I put that for the record, eager to listen to the deputants.

The Chair: Thank you. Mr. Wilkinson.

Mr. Wilkinson: I might add that I understand where Mr. Marchese is coming from. Of course this is unique—

Mr. Marchese: Mr. Chair, sorry. For the record, isn't it the minister who takes the time of the official party? What are we doing?

Mr. Wilkinson: Not according to the subcommittee.

The Chair: She pretty much used her entire time. You've made your opening statement, as has Mr. Barrett, and it's Mr. Wilkinson's opening statement.

Mr. Marchese: I thought the minister normally speaks for the caucus. OK, that's fine.

Mr. Wilkinson: I know we're going to go with the subcommittee report, which all three parties agreed to, as to what we would be doing, which is why we started with that, Rosario.

What I find interesting and unique for me, as someone who did not know much about the environment prior to

coming to this place, is the fascinating belief we have that we need to hear people. We have a forward-thinking piece of legislation that many people will argue—I'll actually bring this up as to what's happening with our neighbours to the south and with some of the other provinces that have been using environmental penalties and civil administrative penalties for many years now with, I believe, some great results.

What I find interesting about this process is that we have a government that's willing to listen to stakeholders. We introduced the bill last October. I say to the member for Trinity-Spadina that what has been happening over the last number of months is that there are many stakeholders, as we will learn over the next few days, and they have all come to the Ministry of the Environment. I've been pleased to take some of the meetings myself on behalf of the minister, so that we actually get a response from people.

They've come to us, and I think they've made many fine points, but we are here today because we don't have a closed-door system on this bill. Other people are coming here today to put on the record their concerns about the bill, about how to strengthen the bill, and their concerns about whether the bill is something they're opposed to. In a democracy we have to do that.

It reminds me of Bill 8 where we were transforming health care, where again we went out before second reading debate. It is an accepted parliamentary tradition and I think it's one where the government shows that it is willing to listen to people. I remember there were previous governments that always thought they had everything right and would come in and ram a bill through and use time allocation. Our government is different in what we're doing here.

I say to Mr. Barrett, my friend from Haldimand-Norfolk-Brant, that the coordination of spills prevention, the requirement that all of the MISA industry companies have spills prevention—I can't see what's wrong with that. As someone who lives in a community with his family, I think that industry should, let alone have a plan to mitigate it if there is a spill, which happens regrettably from time to time, have a plan to prevent it in the first place. Surely it is better to prevent the spill. This bill will say that, yes, it's a requirement now that if you want to be in this jurisdiction, we expect you to have a plan to prevent it.

I don't think it's the same old, same old, and I don't think we have taken an adversarial approach. If we had taken an adversarial approach, we wouldn't be sitting here today after six months of consultation, and now looking forward to a number of more days of consultation and going through the clause-by-clause process as proposed by the minister, and also other amendments that I'm sure the opposition parties and the government will want to bring forward. It's a nice, open, transparent system about changing and protecting our communities right here in the province of Ontario.

The Chair: Thank you, and thank you, Minister, for coming.

1630

ASSOCIATION OF POWER PRODUCERS OF ONTARIO

The Chair: Our first deputation this afternoon is the Association of Power Producers of Ontario, Mr. David Butters.

Please make yourself comfortable. Would you begin by stating your name for the purposes of Hansard. You have 15 minutes before us this afternoon. Any time you have left after your presentation will be divided equally among the three parties to ask you questions. The floor is yours. Please begin.

Mr. David Butters: My name is Dave Butters. I'm the president of the Association of Power Producers of Ontario. We appreciate the opportunity to appear today before this committee.

With me today is Elizabeth DeMarco of McLeod Dixon LLP. Lisa was a former prosecutor of environmental offences for the MOE legal services branch and is generally recognized as a Canadian expert on emissions trading. She represents a range of energy marketing and electricity generation clients, including cogeneration and green power companies, on power projects and emission matters and proceedings in Ontario and Canada. She has been our counsel in this matter.

This afternoon we'd like to discuss some aspects of Bill 133 that we believe may prove problematic in terms of Ontario's environmental and energy policy objectives. We've distributed copies of our speaking notes for your consideration.

First, a little bit about APPrO: APPrO is the collective voice of generators in Ontario, a non-profit organization representing more than 100 companies involved in the generation of electricity in Ontario. APPrO members produce power from cogeneration, hydroelectric, gas, coal, nuclear, wind energy, waste wood and other sources. Our members currently produce over 95% of the electricity made in Ontario, and include both investor and publicly owned generators.

Our mission is, "To promote the interests of electricity generators within a truly open and competitive power industry in Ontario."

APPrO members have a related long-standing commitment to both sustainable energy and environmental policy objectives. We are therefore concerned that, as written, the current provisions of Bill 133 may be counterproductive in realizing the government's energy and environmental policy objectives. This position is supported by an examination of a number of things: the energy policy context; the environmental policy context; the energy implications of increased director or officer liability; the environmental implications of catch-all absolute liability offences; and finally, simply, practical implications for electricity generators.

First, the energy policy context: Electricity is the very lifeblood of Ontario's economy. Without adequate, reliable and affordable supplies of electricity, the pros-

perity and quality of life we enjoy in this province would not be possible.

While Ontario currently has about 30,500 megawatts of generation capacity, between now and 2020, factoring in the growth of our economy, approximately 25,000 megawatts of electricity capacity is due for retirement or refurbishment. This includes the phase-out of all coal-fired generation by 2007.

This means that we have to mobilize very large amounts of capital from the private sector to replace this generation capacity to ensure Ontario's energy future. The government has kick-started this process over the past year through a series of RFPs for renewable and clean power as well as bilateral negotiations with Bruce Power, and our members have been very engaged in this.

We've responded to the government's urgent energy supply needs by, as I said, actively participating in these initiatives; however, this is only a beginning. Ontario's ability to draw its rightful share of North American energy investment rests in large part on the conditions perceived by investors that differentiate it from opportunities in other parts of Canada, the United States or even elsewhere, including Mexico, for example.

The environmental policy context: The Ministry of the Environment and the Ontario government have launched a number of policy initiatives in order to improve air and water quality in Ontario and have demonstrated a commitment to get tough with companies responsible for spills that damage the environment and compromise the health of Ontarians, through enhanced environmental inspections and enforcement of environmental laws. While APPrO is supportive of the objectives behind Bill 133, APPrO submits that the current wording of the bill is likely to have a number of unintended impacts that may frustrate the achievement of each of the government's energy and environmental policy objectives.

The basic issue is that, if enacted, Bill 133 will unduly increase the potential environmental liabilities and associated penalties faced by officers and directors of corporations managing Ontario generation facilities. Such liability would ensue regardless of whether the officer or director was duly diligent in discharging its management duties and appropriately delegating day-to-day environmental, health and safety matters to a responsible manager.

APPrO submits that this potential for personal liability, even in instances of appropriate delegation, is, first, far more onerous than good business standards require and out of line with the standards faced elsewhere by directors and officers of corporations that are interested in developing new Ontario energy supply; second, likely to detract from the requisite management functions of officers and directors by requiring hands-on, day-to-day involvement in environmental matters; third, likely to impact the coverage and costs associated with directors' and officers' insurance.

As a result, the proposed director and officer liability provisions will constitute a new and additional systemic barrier to the development of new electricity supply that

is additional to those experienced by power developers in other jurisdictions and contrary to the government's energy policy objectives.

APPrO supports the government's intention to ensure high-level corporate responsibility for environmental matters, but strongly recommends that the government ensure that the resulting standards imposed on corporate directors and officers are consistent with good business practices and allow for the individual protections of the law through the availability of a full due diligence defence.

APPrO appreciates the issues that have given rise to the environmental penalty provisions of Bill 133. However, APPrO submits that the breadth of the proposed environmental penalty provisions in Bill 133 is likely to result in further delays and legal challenges in the event that an environmental penalty, and the associated absolute liability, is imposed on a diligent defendant for a release that poses no serious risk to public safety.

The current environmental penalty provisions of Bill 133 would allow for an absolute liability offence to be imposed, even in situations where the environmental release is minor, despite the due diligence of responsible parties, and poses no serious risk to public safety. As a result, APPrO submits that the breadth of the proposed environmental penalty provisions is likely to result in numerous and lengthy court challenges. Such challenges are likely to delay rather than expedite the administration of environmental justice, and therefore frustrate the government's underlying policy objectives. APPrO therefore recommends that the government circumscribe the proposed application of the Bill 133 environmental penalty provisions to only those spills and releases that are avoidable and pose a serious risk to public safety.

Finally, practical implications for electricity generators: Bill 133 may also result in unintended impacts on electricity generators. For example, in circumstances where the electricity supply margin is constrained, such as peak winter and summer days, the independent electricity system operator, the IESO, may require an electricity generator to enter into reliability must-run contracts and produce additional electricity and associated emissions. Such a contract permits the IESO to call upon a generation facility to increase its output in order to maintain the reliability of the IESO-controlled grid whenever sufficient resources have not been offered into the IESO-administered markets. Often this will occur in high-risk or emergency operating states as experienced prior to and during the blackout of August 14, 2003.

Under the proposed bill, an electricity generator may be subject to absolute liability through an environmental penalty if it complies with the IESO must-run contract and supplies the emergency electricity prior to receiving a timely approval from the Ministry of Environment to exceed emission limits, as was the case in the blackout. In addition, it may face penalties and additional costs under Ontario's emissions trading regulations. The diligent electricity generator would therefore find itself in the position of facing unavoidable consequences and po-

tential prosecution under either the electricity regime or the environmental regime set out in Bill 133.

Clearly, such a situation is not consistent with both the government's energy responsibilities and environmental objectives. While we welcome the minister's comments earlier, in conclusion, we would recommend that the government make two main changes to the bill in order to achieve both its energy and environment goals: first, that it limit the application of environmental penalties to sectors other than the electricity sector, which is already subject to additional environmental requirements and consequences under the electricity and emissions cap and trade regimes; and second, restrict the scope and application of absolute liability offences to situations where there is a serious risk to public safety.

That concludes our remarks. Thank you for the opportunity.

The Chair: Thank you for coming today. We will have time for one brief question from each caucus.

Mr. Barrett: Thank you, Mr. Butters and Ms. DeMarco. You make mention of individual liability. I know there has been some discussion in the media about an employee or a worker who would end up with a \$20,000 fine, perhaps in a situation where they were following the rules, following all the guidelines and they were operating equipment that did have a sound maintenance program. One of my questions is, how does this really advance environmental protection? I can see the downside of this as well. If somebody was concerned about that kind of thing, they're going to take other measures to save their own hide. How would this really work in the workplace?

1640

Mr. Butters: I'm not sure I can answer the question of how it would work in the workplace. I think the issue is that in going forward, investors in electricity generation projects would look at this the way it's currently construed and say, "That's a risk that I can't quantify, and I'm going to have to figure out how to build that into my project costs." Those project costs would then therefore get passed through into other costs, and ratepayers and taxpayers will wind up paying for that. I think that's the issue we want to focus on.

Mr. Marchese: Mr. Butters, do I understand correctly? What you're saying is that the electricity sector should not be subject to these penalties. Is that correct?

Mr. Butters: What we're saying is that the electricity sector is already subject to a number of environmental and emission—

Mr. Marchese: What are they again?

Ms. Butters: I'll ask Ms. DeMarco to speak to that.

Ms. Elizabeth DeMarco: A number of penalties through regulation 397/01, as well as their operating permits, certificates of approvals and their environmental assessment requirements. Fuel-specific regulations also apply to certain electricity generators; for example, the nuclear industry is extraordinarily regulated.

Mr. Marchese: What kind of penalties would you be subject to, therefore, if something went wrong?

Ms. DeMarco: They are subject to penalties pursuant to contravention of a regulation under the Environmental Protection Act, so the same penalties would apply. Let me give you an example. Under regulation 397, if an electricity generator did not comply with the obligations, if it contravened them, it would be subject to the penalties under subsection 186(3) of the Environmental Protection Act, which are quite significant under the proposed amendments. So there are a host of avenues.

Mr. Wilkinson: Thanks for coming. I appreciate that, David and Elizabeth. I'm just looking at some material provided to me by the Ministry of the Environment. My understanding is that in 2003 or 2004, looking at your members on electricity power generating who are MISA sector companies, there were no spills at Atikokan, Bruce Bulk Steam, Bruce Nuclear Power Development and Thunder Bay, but there were spills at Bruce A and B, Darlington, Lakeview, Lennox, Nanticoke, Lambton and Pickering.

Of those companies, some of them, particularly the nuclear facilities, are required to have spill contingency plans, and I can understand that. Some of them also have spill prevention plans. One of the things we're talking about in this bill, of course, is having spill prevention plans and, obviously, spill contingency plans for everybody. Some of them are required because of their certificate of approval from the MOE, and some of them are voluntary. I guess my question, as a business person, is, why would we not want to have—for example, in your sector—just a raising of the bar for everybody? Because some of the companies don't seem to have to have spill prevention plans; some do; some have spill contingency; some don't; some have to do it; some don't.

It strikes me that, for the good of the environment, it costs us money when there's a spill. It may reduce your costs, but it costs the community money. This kind of patchwork is the thing that strikes me.

The Chair: A brief answer, please.

Ms. DeMarco: There's a large distinction between the obligation to have a spill prevention plan and the application of an environmental penalty. Certainly, in no way, shape or form, should you take APPRO's comments as not supporting the environmental objectives of having a spill prevention plan. It's certainly a strong objective and a good portion of the bill. But the contrast is, in the application of environmental penalties, subsection 182.1(13) allows for certain sectors to be named or certain entities to be named. It's our submission that certainly the electricity sector should be named as not having the environmental penalties applicable to it.

The Chair: Thank you for appearing before us with your submission today.

COALITION FOR A SUSTAINABLE ENVIRONMENT

The Chair: The Coalition for a Sustainable Environment: the Honourable Perrin Beatty.

Mr. Beatty, thank you for appearing before us today. I'm sure you're familiar with the process, but let's go through it one more time. You have 15 minutes to make your submission. If you leave any time remaining, it'll be divided among the parties for questions. Before you start, please identify yourself and anyone else who will be speaking for the purposes of Hansard. Go ahead.

Mr. David Surplis: Thanks, Mr. Chairman. My name is David Surplis. I'm the past president of the Council of Ontario Construction Associations. As Mr. Arnott well knows, I've been here many dozens of times over the years. I realize the Leg Assembly doesn't give out frequent deputant flying points or miles, but maybe we can talk about that another time.

I'm actually here to tell you that, probably because of all that experience, I was chosen as chairman of this ad hoc coalition to examine Bill 133 and its implications.

I'm happy to introduce my good friend the Honourable Perrin Beatty, who has had more than 30 years of offering his services, his expertise, his knowledge in the service of Ontarians and Canadians, most recently as president of the Canadian Manufacturers and Exporters. He took a very keen interest in the ramifications and perhaps unintended consequences of Bill 133, and has come to our assistance and is going to take you through our submission, we hope.

Hon. Perrin Beatty: Thank you very much, Mr. Chairman and members of the committee. Could I start by expressing my appreciation to all parties in the Legislature for the all-party decision to refer this matter to committee prior to second reading, which allows us to have full public discussions of the provisions in the bill and to make improvements to the bill before it proceeds further. Also, may I express my appreciation to the committee for seeing us today.

We're here representing more than 40 associations of Ontario's major employers. These associations, in turn, represent tens of thousands of companies and more than a million workers.

We'd like to make it clear that the coalition fully supports measures to improve the environment. All of our members are fully committed to sustainable environmental management and firmly support the highest standard of care to protect our environment. Our members know that benefits flow to all of society when we practise principled stewardship of our resources. All of our members strongly agree that those who damage the environment should bear the costs of response, abatement and remediation. A great many of our member companies are ISO-registered, and that designation is only awarded and renewed to those who demonstrate fair, ethical and sound business practices including, of course, principles of stewardship.

Turning to the bill itself, we welcome the minister's statement that the government will propose amendments. Because we have not had an opportunity to study the wording of the amendments, our comments will refer to the bill as it is currently drafted. We would, however, hope that the minister would make available to the public and to the members of the committee, at the earliest

opportunity, the specific wording of the amendments and that we would be given the opportunity to study those amendments, to look at their implications and to make further written submissions to the committee in response to those proposals.

It's instructive to note that when the bill was posted under the Environmental Bill of Rights process for comment, there were 164 responses, of which 157 expressed significant concerns about various parts of the bill, including civil liberties issues, and mentioned the complete lack of meaningful prior consultation. As a group, we petitioned the government for a hearing on the points where we felt that improvements could be made. While we recognize that elements of the bill are embodied in other legislation, this combining of these elements into one act has not been fully understood or adequately explained to the people of Ontario.

In the first place, our major complaint was that there has been little explanation of the real intent of the legislation that is so broad in scope. It has been said that its aim, through regulation, is to force MISA-regulated facilities to pay up, and quickly, whenever there is a spill. But if that is the intent of the bill, we wondered why its provisions are so sweeping and potentially include everyone in Ontario, including private citizens. Why were the powers under existing legislation not chosen for enhancement and enforcement?

We want to talk today about potential amendments, but we also want to ask first why a single class of facilities—MISA facilities—is being singled out when other entities have equal or greater capacity to cause damage to the environment. The targeting of MISA facilities, which are already heavily regulated, is of grave concern when other entities are to be exempt. We are left to wonder as to how this approach will improve the protection of the environment from all potential incidents. It would appear that very different standards are being expected from the private sector than from the public sector, without relevance to the ability to pollute.

In addition, it should be noted that Bill 133, were it in place, would not have addressed the recent incident that affected drinking water in Stratford, and it certainly would not have had any effect in Walkerton. Surely we all believe in the principle of equal application of the law.

Finally—and this is of particular importance to me—we would stress that, as currently worded, the bill gives the government the ability to include or exclude whole classes of citizens and organizations at the stroke of a pen. We believe that the Legislature of Ontario has a clear responsibility to defend the rights of Ontarians to be free of arbitrary and capricious actions, by limiting the regulation-making authority contained in the bill to those purposes that the government has explained and justified at the time that the bill is passed.

1650

One publicly stated reason for creating environmental penalties is the relative slowness of court action. There's a need, we're told, to be swift afoot. Apart from the obvious question—why not address the slowness of the

court process?—we accept, although we're disappointed, that the government has decided that EPs are the answer, so we have a number of suggestions to improve their administration.

Given that the bill, as written, would allow EPs to be calculated using direct spill costs as well as punitive charges, it's important that the government official applying an EP take into account due diligence considerations and remove the reverse onus provision as it currently applies to EPs. It would be a miscarriage of justice if a company were forced to pay a substantial EP only to be found not guilty in a court of law on the grounds that the company took all reasonable measures to prevent a spill and, in fact, may not even have been guilty of the spill at all.

The government official must have the ability to take into account the incident-specific factors before taking the very serious action of levying an EP. If an EP is to be levied in a spill incident, we believe that only someone at the director level or higher should be authorized to issue EPs, to ensure that considerations for due diligence and evidence of guilt can be taken into account. Such a provision would supply senior government oversight to a critical decision and would avoid the situation in which field staff would act as police, prosecutor and judge, a situation we believe would seriously undermine co-operative interaction with ministry staff.

We're also concerned that EPs are to be levied on employees and officers of a company. This proposal is patently unfair to employees when it is the company that has the full responsibility for its assets and actions. We believe that the possibility of serving directors, employees and contractors with EPs should be removed by amendment.

We're also very concerned that punitive EPs would place a company in double jeopardy. Under the bill's proposals, a company could sustain EPs far in excess of the costs of response, abatement and remediation, and then face equally huge penalties via charges filed under the Environmental Protection Act or the Ontario Water Resources Act. Under that provision, a company would be penalized twice for the same infraction. Such a provision is completely unfair and unwarranted. We suggest that if EPs are to be the chosen vehicle, then they should follow the New Jersey model and allow subsequent fines, if any, to be offset by EPs previously paid in full.

There's a widespread concern regarding the loss of due diligence as a defence. Mr. Chairman, you'll be well aware that due diligence is a guiding principle for companies that want to succeed. There's also a long-standing history of it being recognized in case law throughout Canada, including in Ontario. For example, this fundamental principle underlies all safety programs at the Workplace Safety and Insurance Board. Everyone wins when due diligence is applied. It must be both recognized and encouraged. An amendment that would allow the amount spent by a company on response, abatement and remediation to be recognized as an offset to either an imposed EP or to a fine in the event that a company is prosecuted or fined would encourage companies to

continue practising due diligence. A company that does all that it could and should be doing deserves recognition for its efforts.

Let me turn to the issue of “likely” versus “may.” With regard to modifying the threshold definition of “environmental consequence,” we’re concerned that the extremely important and drastic proposed change in wording from “likely to cause” to “may cause” might escape attention. That provision, however, is probably of greater consequence than any other aspect of the bill. “May” could be used to apply to virtually any set of circumstances, and it could be used pre-emptively.

Most importantly, the change from “likely” to “may” calls into question the very basis for measurement of both offences and compliance. The Ministry of the Environment issues certificates of approval on the basis of scientific measurement. Charges are laid under various acts on the basis of scientific measurement. The use of the word “may” is subjective, without the ability to use measurement associated with its application. That fact undermines virtually all provisions of existing legislation by overriding the use of science and its principle of measurement as the basis for legislation. How could any conscientious company maintain compliance? What would “compliance” mean? We would therefore recommend an amendment that would give the very necessary precision to the words used in the act.

In the bill as introduced, there’s a provision for a community fund, and that causes serious concern for our members. The lack of definition of the fund implies that it could be used for purposes other than to address the immediate spill. We ask why funds from EPs could be utilized for projects far removed from the circumstances of a spill. In that vein, EPs would then be truly punitive and could be levied without necessarily allowing recourse to the judicial system with all its checks and balances. An amendment clarifying that point, and ensuring that EPs could be used only to deal with circumstances relevant to why they were being levied in the first place, would be most welcome.

Members of the coalition are very concerned about the provisions for reverse onus and absolute liability written into the bill, for they’re the very antithesis of due process and civil rights that we as Ontario citizens are guaranteed. We still find these provisions to be offensive to democratic principles, even if they apply only to EPs. If it is understood that the imposition of EPs will fully take into account both the severity of the damage and the cost of action taken by the company, as in New Jersey, then their application would be less troublesome to us.

Let me conclude this way: To summarize, CASE members are still concerned about Bill 133 and about its wide, sweeping scope, and we state again that it would have been a better and more sustainable piece of legislation had the time been taken to consult before its introduction. But we do again underscore the fact that we appreciate the initiative taken by the Legislature and by this committee to invite us in at this stage. This is an important and, I think, a very positive step that has been

taken by the government and by all parties to invite this public input, and we’re grateful for that opportunity.

Given the realities of how the bill was drafted, we believe it would be substantially improved by amendments saying:

(1) There will be a more specific definition of “spill” for the imposition of EPs.

(2) There will be no exposure of directors, employees, contractors and/or agents to EPs.

(3) EPs will be issued only at the director or higher level.

(4) There is a narrowing of the regulations’ powers to limit regulation-making authority to the purposes that have been explained and justified to the Legislature at the time the bill is passed. If the government has the intention to apply the bill only to certain classes of citizens and organizations, the bill should be limited to those groups with the requirement that the government seek authorization of the Legislature if it decides to broaden the bill’s application.

The Chair: You have about a minute left.

Hon. Mr. Beatty: Let me digress simply to make this plea as a former parliamentarian myself. It is an essential part of the responsibility of every elected representative to ensure that when granting regulation-making authority to the executive, the grant of that authority is confined to the area that has been justified to the Legislature or to Parliament at the time the legislation is adopted. I urge you strongly to consider that principle.

(5) Preventive actions and the costs of response, abatement and remediation absorbed by a company will be taken into account regarding EPs, and that payment of an EP is not to be considered an admission of guilt; if proven innocent, an EP is reversed.

(6) The community fund will only be used to cover the actual costs of response, abatement and remediation for each spill event.

(7) Due diligence is restored and recognized.

(8) The huge difference between “may” and “likely” will be clarified and “may” will not be available for pre-emptive action.

If it’s the ultimate opinion of the committee that the provisions for EPs are unavoidable, we ask that consideration of due diligence be allowed and that the government official applying the EP be satisfied there is sufficient evidence of liability before an EP is issued.

Mr. Chairman, thank you for hearing us and for your efforts to examine and remedy the flaws in the current draft of Bill 133. We welcome this opportunity to express our concerns and we renew our commitment to work with all stakeholders to enhance Ontario’s environment and to strengthen its economy.

The Chair: Thank you, and your timing is impeccable. That’s your 15 minutes. We thank you very much for your time and your efforts in preparing your statement and your deputation before us today.

1700

Mr. Barrett: On a point of order, Mr. Chair: Just following on this presentation where we’ve had an

indication of eight amendments, previously the minister made an indication of a number of amendments. I am having difficulty squaring to what extent the last two presentations' amendments coincide with the government's amendments. I would ask if the government could give us the amendments. We can look it up in Hansard, but it's an awful lot of—

The Chair: Mr. Barrett, you would be out of order, because at this point our job is to hear the deputations prior to drafting any amendments.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair: The Canadian Environmental Law Association: Paul Muldoon. Before you get started, you have 15 minutes to present to us. Please begin by identifying yourself for the purposes of Hansard and proceed.

Mr. Paul Muldoon: Good afternoon. My name is Paul Muldoon. I'm the executive director of the Canadian Environmental Law Association. The association is a non-profit organization founded in 1970 for the purpose of improving environmental law in the province. Funded as a legal aid clinic specializing in environmental law, we represent individuals and groups before trial and appellate courts and administrative tribunals on a variety of environmental issues. We also undertake public education, community organization and law reform efforts. For your convenience, I've handed out copies of my remarks.

Where I want to start my submission is at the nature of the problem. Environmental spills continue to be a major threat to our environment and public health. In a recent report, it was noted that those facilities caught by this bill, the MISA facilities, accounted for some 84% of reported spills in 2003 and over 97% in 2004. Available data indicate a six-fold increase in the number of water treatment plant intake closures across the province due to spills from MISA facilities from 2003 to 2004. Spills from MISA facilities increased from 2003 to 2004 by some 13%, with an increase in the average volume of liquid spills from approximately 15,000 litres to 55,000 litres.

Members of the committee, spills are a major environmental problem. I've been quoted as stating that this is a crisis. This bill is not academic; it's not responding to a phantom concern. It's a real concern to the people of Ontario, and action is needed. The Canadian Environmental Law Association strongly supports this bill, and we urge you to forward it through the legislative process as quickly as possible and get it into law to protect the environment and the people of Ontario.

What I'd like to do is talk about two aspects of the bill. One aspect deals with environmental penalties, and the other deals with environmental prosecutions.

With respect to environmental penalties, this tool has been used effectively in other jurisdictions such as British Columbia and New Jersey. It seems to us it's appropriate that the Ministry of the Environment have the

enhanced powers to deal with this urgent and long-standing problem. Why would we handcuff our environmental officials to deal with such an urgent problem? Let's give them the necessary tools and legislative power to act, to act preventively, and to act on an urgent matter. The intent of the legislation is clear, it's needed and we should push ahead with it.

Despite our clear, strong and unequivocal support for the bill, we see some areas within the regime of environmental penalties that could actually be strengthened. I'd like to talk about three of them this afternoon.

The first one is that within the bill, environmental officials can impose a penalty upon those facilities. Subsequent to the penalty, they can negotiate a settlement agreement; in effect, reduce the fine or other measures.

That settlement agreement deals with the reality of the situation. It's a worthwhile endeavour. However, our amendment suggests that the settlement agreements ought to be made public. Think of the downstream interests, those community members who had to forgo their water supply or have other consequences. Certainly they have the right to know what happened after the issuance of the environmental penalty. We're simply saying it should be made public, and we're suggesting those settlement agreements should trigger information notices under the Environmental Bill of Rights registry. In this way, they would be public and transparent, and all parties, both government and private industry, would be accountable.

The second issue I'd like to raise in terms of improving the bill—it seems to me the minister has pointed out possible amendments in this area—is mandatory spill prevention plans. Certainly this is a needed effort. Our view, though, is that these provisions may even want to go further. Not only should the provisions deal with spill prevention, but should also deal with pollution prevention. It seems we are at an interesting time and opportunity to attempt to engage industry to look at the facilities and not only plan to reduce spills but pollution generally. In our view, they should be mandatory on facilities and expanded to ensure that these are made available so that the government has an idea of what's going on and takes action, as appropriate.

The previous deputant noted that the bill only applies to MISA facilities. I presented data this afternoon that suggests there's good reason for that, that they are a significant contributor to the problem. But we also recognize that there may be other sectors that also may be part of the problem. Our solution to this is to urge you, as legislators, to pass Bill 133. Let's get it in place, let's see how it works, and then, over time, phase in other sectors on an as-needed basis when we see a constituency where spills are becoming a problem. Let's phase in this legislation and broaden this application. Once we've learned some lessons, we understand how it can be implemented. That way, that concern can be dealt with by expanding the scope in an appropriate way.

That deals with the environmental penalties. I would like to talk for a moment about environmental prosecutions. The use of environmental penalties should not be

considered a replacement for environmental prosecutions, but as a supplementary tool to a wide range of measures designed to ensure compliance with environmental laws. As commentator John Swaigen noted, "It is likely that every prosecution has a ripple effect throughout the industry and that a single prosecution has a much greater deterrent effect on other potential offenders than administrative remedies." In other words, we are suggesting that the provisions in this bill which deal with environmental penalties are certainly valid, but the environmental prosecution side should also be beefed up to ensure that both of those regimes are robust.

As such, the Canadian Environmental Law Association strongly supports the amendments which would reduce the threshold for prosecutions under the Environmental Protection Act. These amendments lower the threshold by changing the requirement that an activity is "likely to cause" an adverse effect to "may cause" an adverse effect. This wording already exists in the Ontario Water Resources Act and, in our view, is long overdue and would even out the tools so the tools are made available and accessible.

The other aspect that deals with prosecution is the provisions dealing with deemed impairment. Deemed impairment is a proposed provision of the Ontario Water Resources Act. This provision outlines the criteria used in determining when something may cause an adverse effect for the purposes of the prosecution. In other words, at the present time, due to a court case, the prosecutor must establish actual impairment of water before a prosecution. The bill proposes language that would allow deemed impairment, or those circumstances where a definition of what kind of impairment would suffice for the purposes of prosecution. Our view is that it rectifies the situation we now have, which deters prosecution, and clarifies that decision in a very appropriate way.

The last suggestion we have to improve the bill is that the Ministry of the Environment should provide detailed annual reports to the public to assess the use of environmental penalties and to reveal and outline the investigation and prosecution record in the environmental realm. Reports on compliance were undertaken for many years, through the late 1980s and 1990s, and then they were stopped. So the public of Ontario does not have a good view of the state of compliance. It does not have a good view of what the prosecution record is. We think that's essential and important, but we also think it should be important to have a record of what the use of environmental penalties is. In this way, groups like mine can praise or suggest more rigorous enforcement, depending on what the data states.

In conclusion, the Canadian Environmental Law Association welcomes the overall direction taken by this legislation and supports Bill 133. We've offered, hopefully, some constructive amendments to improve and enhance the bill, but in the meantime we strongly urge that the Legislature push ahead with the bill and see its timely passage into law for the benefit of the environment and public health for the people of Ontario.

1710

The Chair: Thank you. We should have time for about a minute each for questions, beginning with Mr. Marchese.

Mr. Marchese: I have two quick questions of Mr. Muldoon. Obviously, the minister came here and indicated there would be amendments. It is unusual for us not to have the wording. By the way, we will only know toward the end of the proceedings. Then they're introduced, dealt with in one day, we'll get back to third reading probably for one day, and we're done. So you're not going to get much of an opportunity to see those amendments. Does that concern you?

Mr. Muldoon: If it's a choice between our amendments and no bill, we'd rather take the bill. But we do think that our suggestions are constructive for improving the bill.

Mr. Marchese: I understand. We're going to try to do that as well. It appears to me that the use of environmental penalties is often presented as a kind of panacea for reducing pollution in the environment. You probably agree, and that is why you're talking about including provisions aimed at reducing the use of pollutants. Is that right?

Mr. Muldoon: That's exactly right. There are two things. One, we'd like the bill to get through the Legislature. It's needed; it's required. But there are other environmental priorities which we, as an association, would really like to further. Pollution prevention is one of them. Let's get through this bill and move on to that. This bill can contribute to that by mandating pollution prevention plans to reduce pollution, so it could perhaps look toward that goal also.

Mr. Wilkinson: Thank you for coming in, Paul. I must admit, today is a day when we have some high-powered people in Ontario who have a great deal of experience coming to advise us. We really appreciate somebody like you and, obviously, Perrin Beatty coming today. It's wonderful.

I just have a couple of questions about the transparency of settlement agreements. Really, it goes to a question of accountability. I'm just worrying about the cost of doing that. That should be somehow factored in so that the government can get these things put on a Web site or an annual report. How do you see that working?

Mr. Muldoon: Right now, there is the Environmental Bill of Rights registry, which is a very effective, very well-used mechanism for the public to access—

Mr. Wilkinson: It's posted there.

Mr. Muldoon: Exactly. This law itself is posted there. Perhaps there are other options, but that could be a vehicle to posting settlement agreements, so that downstream interests who are affected by this bill could say, "Why did the government reduce the penalty?" or, "Why did the government increase the penalty?" just to add that kind of clarity. The benefit of this bill is often for those affected by the spill. The bill right now does not allow for that disclosure, and I think it's kind of unfair, because those affected should have the right to know what went on.

Mr. Barrett: Thank you, Mr. Muldoon, on behalf of CELA. In reading the legislation, I see no mention of spills prevention or planning. In the government's IPAT report, Dr. Isobel Heathcote's report, they address that lack in our society. They call for an introduction of regulatory requirements not only for pollution prevention plans but also spill prevention plans, including multiple barriers and spill contingency plans.

You made brief mention of an amendment. Are you looking at those three areas in your amendment?

Mr. Muldoon: Yes. I think that the spill prevention plan is very important and it would be a very positive and constructive amendment to the bill.

The Chair: Thank you very much for coming in today. Thank you for your deputation as well.

LAKE ONTARIO WATERKEEPER

The Chair: Lake Ontario Waterkeeper: Mark Mattson. Just begin by stating your name for the purposes of Hansard. You have 15 minutes for your deputation. If you leave any time, it'll be divided among the parties for questions. Please begin.

Mr. Mark Mattson: Thank you. I'm Mark Mattson and I'm president of Lake Ontario Waterkeeper. Lake Ontario Waterkeeper is part of the Waterkeeper Alliance. There are 130 different Waterkeeper groups in North America. Our president is Robert Kennedy Jr. We have nine keeper programs in Canada, and I'm the board member for those keeper programs. We're a charity. Our role, really, is to help enforce environmental laws and regulations, as well as to try to win back some of our rights to swim, fish and drink in our rivers, lakes and watersheds. We've been involved in Bill 133 from the beginning. Our comments are on the record already as part of the EBR registry, which went forward a number of months ago. Thank you very much for the opportunity to come here today.

Lake Ontario Waterkeeper has been on the water, visiting communities, taking samples, and investigating polluters since 2001. In that time, we've seen an epidemic of spills in Ontario. In Toronto, the Don River turns red and the Humber River bright blue, and both rivers are sometimes covered with mountains of foam. The TRCA recently reported that there were 6,936 reported spills in the region between 1988 and 2000.

We've been active in Sarnia, where the community invited us recently to come help after a rash of chemical spills in 2003-04. The Canadians and Americans living on the St. Clair River have suffered from the effects of more than 800 spills in the last 20 years.

Just last month, I'm sure you've all heard about the 77,000 litres of Voltesso 35 spilled at the Bruce nuclear plant on Lake Huron. The oil is used as an insulator in transformers. As a result of this spill, aerial, boat and land-based monitoring programs had to be instituted, clean-up experts had to be brought in, drinking water wells had to be put under constant surveillance, and distressed animals had to be rescued. The public was urged

to stay away from the spill for fear of respiratory irritation. In other words, there are real casualties in this epidemic: the people, who can no longer safely swim, drink, or fish in local waterways, and the aquatic life and birds that rely on clean water for survival.

Lake Ontario Waterkeeper believes that Bill 133 is about protecting communities, not about punishing polluters. It is the best possible remedy for the epidemic of spills. Pure and simple, the bill is a code of conduct for business in Ontario. It is not criminal or quasi-criminal sanctions, which remain in the realm of the courts. This code of conduct ensures that companies that have been granted the privilege of using public waterways in their industrial processes can be disciplined for infractions by the professional regulating body; that is, the Ministry of the Environment. The Bill 133 regime is akin to the codes of conduct that apply to professional groups such as doctors, lawyers, accountants, engineers and even hockey players. These professionals are accountable to both their codes of conduct and the general laws of the land. Bill 133 provides a level of certainty and fairness that is currently missing in Ontario. Businesses and communities will all understand what the rules are and what the repercussions of a spill will be.

We understand that the business community is worried about Bill 133. Detractors say that it will not provide a deterrent. It does not need to provide a deterrent. That is what the other provisions in the Ontario Water Resources Act, the Environmental Protection Act and the Fisheries Act are for. Bill 133 needs to help the casualties of the spills.

Detractors say that Bill 133 will encourage cover-ups, that employees will be afraid to report spills. This implies that employees are currently reporting spills out of the goodness of their own hearts. This is not true. Reporting is required by law, and if it does not happen, charges can and will be laid. That does not change with Bill 133.

Detractors say that Bill 133 is a cash grab. That is not true. The real cash grab is polluters robbing communities of environmental rights and forcing taxpayers to clean up every time a company spills into a public waterway. Bill 133 remedies this.

Detractors say that Bill 133 discriminates against business. This is not true. Businesses in Ontario have unique access to some of the world's most valued fresh water. This code of conduct simply ensures that this privilege is respected.

Once you get past the spin, it is clear that Ontarians need Bill 133. This is not punishment for industry. This has nothing to do with industry. Bill 133 provides security for communities affected by spills, period.

We have made a number of recommendations. They're part of our EBR comment. I can say that we would agree wholeheartedly with Mr. Paul Muldoon of the Canadian Environmental Law Association and his recommendations. Second, we believe that the tax loophole that allows companies to write off environmental penalties currently should be continued to be of concern to the Ontario government, as I know it is, and it should be closed. Third, a clear enforcement policy for

the proposed legislation should be committed to, with the necessary resources necessary to implement it effectively.

As Mr. Muldoon indicated, an annual report for the public should be published. This report should include information such as the number of spills reported, the number of investigations conducted, the number of penalties awarded and the number of penalties collected.

Finally, I think we all know the importance of trying to prevent spills and working proactively. That is the role of the Ministry of the Environment and the abatement staff in Ontario. They consume 80% to 90% of the resources at the Ministry of the Environment. The enforcement wing of the Ministry of the Environment is minuscule in comparison.

This bill certainly helps put some of the stick—not as a punishment, but certainly as a way to compensate the victims—back into our laws. I think it balances some of the carrot-and-stick approaches that are necessary to protect our waters.

Those are my comments, and I'm open to questions.

1720

The Chair: Thank you very much. We'll have just a little over two minutes per party, beginning with Mr. Wilkinson.

Mr. Wilkinson: Great, Mark. Thank you so much for coming. On a personal note, I had the pleasure of hearing Robert F. Kennedy Jr. the last time he was in Toronto over at the U of T. It was a remarkable night; he had lost his voice and he was still one of the finest orators I have ever heard. He is so passionate on this issue.

I just want to follow up on the whole issue here about the taxpayer and communities. It seems to strike me that right now there are spills happening and the burden of cleaning it up is falling upon the community—so, really, on the victim. They didn't spill. Ultimately, it falls on the taxpayer, because the taxpayer—I give the example of Stratford, where we had an accident happen. There was a car wash and some soap and stuff got into our water supply. Of course, there was an excellent response to that, but our whole community came to a stop. Our community had to spend hundreds and hundreds of thousands of dollars. I know it doesn't apply here, but I now have a sense of how it is that it falls upon someone who is innocent to pick up the cost of these spills.

I wonder if you could just elaborate about the need to really restore some justice to the fact that if you spill, you pay, and that it isn't anybody else in the chain—no victim, no taxpayer—who ends up having to pick up that tab.

The Chair: And succinctly.

Mr. Mattson: That, I believe, is the basis of Bill 133. I really believe the bill is trying to bring about fairness for the victims of spills. It is trying to address those concerns, not through the criminal courts, not leaving it to whether or not it was a criminal act; it could have been incompetence. No matter how you look at it, industry needs to take into account those costs and deal with what may not be a criminal fault, but is still their own doing.

They are the ones given the privilege of the certificate of approval. They're the ones the Ministry of the Environment licenses to do their industrial processes and make their profit. They need to consider what happens when things go wrong. That's what this bill is really focused on correcting.

Mr. Barrett: Thank you, Mr. Mattson, for your presentation on behalf of Lake Ontario Waterkeeper. You make, I think I count, three recommendations; for example, close the tax loophole to write off penalties. You indicated that the government is concerned about that. I don't know whether I heard the minister include that today in her recommended amendments. We have confusion in this committee because we don't know what we're dealing with now. You make mention of a clear enforcement policy and also publishing the annual report. I don't think the minister mentioned that today. I may be mistaken. We're all hampered by a lack of information.

In the IPAT report, there is quite a call for improved spills notification and communications systems. When you talk about the annual report, I assume you're talking about something a bit more than just a list of penalties and spills. What would you like to see as far as keeping everybody in the loop and, in particular, those native communities that may be affected? How do we keep them in the loop?

Mr. Mattson: Thank you, Mr. Barrett. I know that in the past you've been quite helpful to many of the environmental issues, so I know that your questions are genuine.

I indicate that we have put our recommendations in a response as part of the Environmental Bill of Rights registry. We have put those recommendations into that process, and at some point the government needs to respond to those questions. They weren't mentioned today by the minister; you're correct. I would hope that, supplementing the EBR registry comments with this parliamentary session, the government will address those issues and bring them to the fore.

In terms of a public notification process, as Mr. Muldoon spoke of, there was, in the past—I think five years ago it was discontinued—a published report that listed all the complaints, where they went to, where the fines were and they were available to all communities across Ontario, not only on-line but also published. You could get them at your local library. They were quite widely distributed. I think it's very important for the community to know what's going on, to hold the ministry accountable, and also to know what's happening in their community as it relates to spills. I'm supportive of increased process. I'm supportive of taking into consideration the recommendations from the EBR and those made today. I hope that's helpful.

Mr. Marchese: Mr. Mattson, three questions, if I can fit them in. First, you are asking that they develop a clear enforcement policy for the proposed legislation and commit the resources necessary to implement it. The Ministry of the Environment, in the recent budget, has been flatlined. Does that concern you vis-à-vis the recommendation you're making?

Mr. Mattson: I only had an opportunity to review the budget briefly yesterday. Certainly, it wasn't going in the same direction it had been going for a number of years. In fact, it may even have increased slightly. But yes, I think that there is not provision in the current budget for enforcing Bill 133 yet.

Mr. Marchese: Do you have any fears that this bill's provision for the EPs will displace the MOE's appetite for prosecuting polluters?

Mr. Mattson: I would hope not. That fear has always been there. We made comments when the original administrative monetary penalties—the AMPs, as they were called—came forward a number of years ago, where they were going to replace the quasi-criminal environmental protections with administrative penalties. We were opposed to that.

We don't see this as replacing the criminal sanctions. They need to remain and they must remain. This is really dealing, as I said—like the law society, it would take away your licence. You would still face criminal sanctions if you committed a criminal act, just like Bertuzzi. He lost 25 games and half a million dollars, and he still went to court and faced criminal sanctions in the court. I think it's the same. This is about a privilege. These companies are given the privilege, through their C of A, to make their livelihood. The regulating agency, which is the Ministry of the Environment, has the right, I think, to penalize infractions.

Mr. Marchese: A quick last question: The Association of Power Producers of Ontario recommends that the government limit the application of environmental penalties to sectors other than the electricity sector. Do you agree with that?

Mr. Mattson: No, I think this really echoes the concerns. When Mr. Kennedy came up here and commented on this bill, he said that this was the end of the race to the bottom in North America. What the Association of Major Power Consumers are asking for, really, is to put that race back on where the lower the standards are, the more competitive the electricity generation system would be. That is certainly not a good idea. We should stop that race to the bottom, and I think this bill adequately does that and lives up to our commitments in North America not to lower our standards to try to bring investment.

The Chair: Thank you for having come in today.

CANADIAN PETROLEUM PRODUCTS INSTITUTE

The Chair: The Canadian Petroleum Products Institute.

Mr. Wilkinson: Just a point of information for my fellow committee members while we're getting set up here: My understanding is that the deductibility would be eliminated at the federal level and thus, by default, at the provincial level, if the current federal budget before the House of Commons passes. Of course, if it doesn't, then that change would not happen. That's just so we know where we are on that whole tax loophole question.

The Chair: Ms. Goodman, you have 15 minutes before us today. If you leave any time, it will be divided among the three parties for questions. Please begin by stating your name for the purposes of Hansard, and then continue.

Ms. Faith Goodman: My name is Faith Goodman. I'm the vice-president of the Canadian Petroleum Products Institute for Ontario.

On behalf of our members, I would first of all like to thank you for the opportunity to speak to Bill 133 and to outline some of the concerns we have with the legislation as it is currently drafted. As an aside, I would also like to thank Minister Dombrowsky for her presence here earlier today, and for meeting with us in the past to listen to our concerns first-hand. In addition, we welcome the minister's statements today. However, we'd like the opportunity to review the proposals in detail and possibly to make additional written comments. We support the minister's stated objective of a safer, cleaner Ontario.

The Canadian Petroleum Products Institute includes all the petroleum refiners and major petroleum product distributors operating in Ontario. Every day in this province, our members process millions of litres of crude oil into fuels that keep Ontario's private and public transportation systems moving and heat Ontario's homes, offices and schools. As well, we provide feedstock to several other value-added industries and produce state-of-the-art lubricants that are found in everything from your car to cosmetics and even to gummy bears.

We serve the people of Ontario 24 hours a day, seven days a week, with over 2,200 service stations across Ontario. In times of crisis, our members are there to provide the fuels needed to keep emergency services operating and power the generators at countless hospitals and seniors' homes. In short, we employ over 80,000 people and are involved in virtually every aspect of the Ontario economy. As CPPI, we work with governments at all levels to create responsible and responsive standards, laws and regulations to safeguard communities, our workers and the environment. That is why I am here today.

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The members of CPPI share the interest of the government of Ontario and the people of Ontario in protecting and enhancing the quality of the province's environment. We are committed to continuously lowering the environmental footprint arising from both our operations and the use of our products.

Earlier today, you heard from the Honourable Perrin Beatty, the spokesperson for the Coalition for a Sustainable Environment. We strongly support the coalition's entire position.

Bill 133 ignores long-established principles of good governance and effectively denies citizens the type of fair treatment they have a right to expect in a democracy. The bill, as currently worded, may in addition have unintended consequences, including undermining the effective relationship between regulators and industry, encouraging industry to focus more on protecting themselves from legal liability than on good environmental steward-

ship practices, and may act as a deterrent to the type of future economic investment the government is working hard to attract.

Our members strongly agree that those who cause damage to the environment should bear the costs of response, abatement and remediation. A great many of our members are ISO-certified and ISO-registered. As you know, these designations are only awarded and renewed to those who demonstrate fair, ethical and sound business practices, including, of course, principles of stewardship. As a result, we agree with the principle of "polluters pay."

We believe the underlying root cause, however, for the majority of concerns with Bill 133 is the fact that there was no meaningful consultation before its introduction. We believe the bill is flawed and will not achieve the results the government seeks. In our original submission to the minister, we recommended the bill's withdrawal and that we start again with the help of experts from all sectors. As this appears not possible, we are here to point out the deficiencies and our suggestions for improvement.

It is instructive to note that when the bill was posted under the Environmental Bill of Rights process for comment, there were approximately 166 responses with over 95% expressing significant concerns with respect to the bill, including civil liberties issues. As an association and as part of CASE, we petitioned the government for a hearing on the points where we thought improvements could be made. While we recognize that elements of the bill are embodied in other legislation, this combining of these elements into one act has not been fully understood nor adequately explained to the people of Ontario.

With respect to the intent of the legislation, our major concern was that there has been little explanation of the real intent of the legislation that is so broad in scope. It has been said that its aim, through regulation, is to force MISA-regulated facilities to pay up, and pay up quickly, whenever there is a spill. But if that is the intent of the bill, we wondered why its provisions are so sweeping and potentially include everyone in Ontario, including private citizens. Why were the powers under the existing legislation not chosen for enhancement and enforcement?

We are here to talk about potential amendments, but we must first ask why a single class of facility is being singled out when other entities have equal or greater capacity to cause damage to the environment? The targeting of MISA facilities, which are already heavily regulated, is of grave concern when other entities are to be exempt. We are left to wonder how this will improve the protection of the environment from all potential incidents. It would appear that very different standards are being expected from the private sector than from the public sector without relevance to ability to pollute. In addition, it should be noted that Bill 133, were it in place, would not have addressed the recent incident that affected drinking water in Stratford, and it clearly would not have had any effect in Walkerton. What happened to the principle of equal application of the law? Is this the kind of Ontario we want to create?

Finally, we would stress that, as currently worded, the bill gives the government the ability to include or exclude whole classes of citizens and organizations at the stroke of a pen. We believe the Legislature of Ontario has a clear responsibility to defend the rights of Ontarians to be free of arbitrary and capricious actions by limiting the regulation-making authority contained in the bill to those purposes that the government has explained and justified at the time the bill is passed.

On the subject of environmental penalties, one publicly stated reason for creating EPs is the relative slowness of court action. It appears that the government wants municipalities to be reimbursed as soon after a spill as possible, without waiting for decisions of a court. There is a need, we are told, to be swift afoot. Apart from the obvious question—why not address the slowness of the court process?—we are disappointed that the government has decided that EPs are the solution. However, if EPs are the chosen vehicle, we have a number of suggestions to improve their administration.

Given that EPs can be based not only on direct spill costs but can also include punitive charges, it is important that the government official applying an EP take into account due diligence considerations and remove the reverse onus provision as it currently applies to EPs. It would be a miscarriage of justice if the company were forced to pay a substantial EP only to be found not guilty in a court of law on the grounds that the company took all reasonable measure to prevent a spill and, in fact, may not have even been guilty of a spill at all.

The government official must have the ability to take into account the incident-specific factors before taking the very serious action of levying an EP. If an EP is to be levied in a spill incident, we believe that only someone at the director level or higher should be authorized to issue EPs to ensure that considerations for due diligence and evidence of guilt can be taken into account. Not only would this apply the needed level of sufficient senior government management oversight to a critical decision point, but it also avoids having field staff act as police, prosecutor and judge in a situation we believe would seriously undermine co-operative interaction with ministry staff.

As written, EPs can be levied on employees and officers of a company. This proposal is patently unfair to employees, when it is the company that has the full responsibility for its assets and its actions. We believe that the possibility of serving directors, employees and contractors with EPs should be removed by amendment.

We are also very concerned that punitive EPs would place a company in double jeopardy. Under the bill's proposals, a company could sustain EPs far in excess of the costs of response, abatement and remediation, and then face equally huge penalties via charges filed under the EPA and the OWRA. Under that provision, a company would be penalized twice for the same infraction, and we assert that such a provision is completely unfair and unwarranted. We suggest that if EPs are part of Bill 133, they should follow the New Jersey model and allow

subsequent fines, if any, to be offset by EPs previously paid in full.

There's widespread concern regarding the loss of due diligence as a defence. Due diligence is a guiding principle for companies that want to succeed, and there is also a long-standing history of it being recognized in case law throughout Canada and Ontario. For example, this fundamental principle is the rationale for all safety programs at the WSIB. Everyone wins when due diligence is applied, so it must be both recognized and encouraged.

An amendment that would allow the amount spent by a company on response, abatement and remediation to be recognized as an offset to either an imposed EP or to a fine in the event that a company is prosecuted and fined would encourage companies to continue practising due diligence. A company that does all that it could and should be doing deserves recognition for its efforts.

With regard to modifying the threshold definition of an environmental consequence, we are concerned that the extremely important and drastic proposed change in the wording from "likely to cause" to "may cause" was simply being buried. This provision, however, is probably of greater consequence than any other aspect of the bill. "May" could be used to apply to virtually any set of circumstances, and it could be used pre-emptively. More importantly, the change from "likely" to "may" calls into question the very basis for measurement of both offences and compliance.

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The Ministry of the Environment issues certificates of approval on the basis of scientific measurement. Charges are laid under various acts on the basis of scientific measurement. The use of the word "may" is subjective without the ability to use "measurement" associated with its application. That fact undermines virtually all provisions of existing legislation by overriding the use of science and its principle of measurement as the basis for legislation. How could any conscientious company maintain compliance? What, in fact, would compliance mean? We would therefore recommend an amendment that would give the very necessary precision to the words used in the act.

In the bill as introduced, there is provision for a community fund that causes serious concern for our members. The lack of definition of the fund implies that it could be used for purposes other than to address an immediate spill. We asked why funds from EPs could be utilized for projects far removed from the circumstances of the spill. In that vein, EPs would then be truly punitive and could be levied without necessarily allowing recourse to the judicial system, with all of its checks and balances. An amendment clarifying that point and ensuring that EPs could only be used to deal with circumstances relevant to why they were levied in the first place would be very welcome.

Members of CPPI are very concerned about the provisions for reverse onus and absolute liability written into the bill, for they are the antithesis of the due process and civil rights that we as Ontario citizens are guaran-

teed. We still find these provisions to be offensive to democratic principles, even if they apply only to EPs. And, if it is understood that the imposition of EPs will fully take into account both the severity of the damage and the cost of action taken by the company, à la the New Jersey model, then their application would be less offensive.

In conclusion, CPPI and its members are still concerned about Bill 133 and its wide, sweeping scope, and state again that it could have been a better and more sustainable piece of legislation had the time been taken to consult before its introduction.

Given the realities of how the bill was drafted, we believe it would be substantially improved by amendments that say that:

(1) There will be a more scientific definition of "spill" for the imposition of EPs.

(2) There will be no exposure of directors, employees, contractors and/or agents to EPs.

(3) EPs will only be issued by at the director—or higher—level.

(4) There is a narrowing of the regulation powers to limit regulation-making authority to the purposes that have been explained and justified to the Legislature at the time the bill is passed. If the government has the intention to apply the bill only to certain classes of citizens and organizations, the bill should be limited to those groups, with the requirement that the government seek the authorization of the Legislature if it decides to broaden the bill's application.

(5) Preventive actions and the costs of response, abatement and remediation absorbed by a company will be taken into account regarding EPs, and payment of an EP is not to be considered an admission of guilt. If proven innocent, an EP is reversed.

(6) The community fund will only be used to cover the actual costs of response, abatement and remediation for each spill event.

The Chair: Just to advise you: You have about one minute.

Ms. Goodman: OK.

(7) Reverse onus is removed and due diligence is restored and recognized.

(8) The huge difference between "may" and "likely" is clarified, and references to "may" are entirely removed.

If the ultimate opinion of the committee is that the provisions for EPs are unavoidable, we ask that consideration of due diligence be allowed and that the government official applying the EP is satisfied that there is sufficient evidence of liability before an EP is issued.

Thank you for hearing us and for your efforts to examine and remedy the flaws of the current bill. We welcome this opportunity to express our concerns but, most importantly, to renew our commitment to work with stakeholders to enhance, as we have been working, Ontario's environment and to strengthen its economy.

The Chair: That concludes the time you have been allotted. Thank you very much for your deputation.

GREAT LAKES UNITED

The Chair: Great Lakes United.

Welcome. You have the last word this afternoon. Please begin by stating your name for the purposes of Hansard. You have 15 minutes for your deputation. In the event you don't use the 15 minutes, the remainder will be divided among the parties for questions. Please proceed.

Ms. Jessica Ginsburg: Thank you very much. My name is Jessica Ginsburg. I am here today as agent for Great Lakes United. Great Lakes United is a coalition of organizations that includes environmental groups, labour groups and community groups across Canada and the United States. Great Lakes United was founded in 1982 and is dedicated to the promotion of clean water and air and the protection of human and environmental health.

Great Lakes United strongly supports the direction taken by this bill and, in particular the new threshold provisions which make it easier for the ministry to prosecute for harmful discharges into the water, air and ground. Great Lakes United also supports the environmental penalty provisions and feels that they assist ministry officials in sending a swift and decisive message to polluting companies.

What I'd like to do during my time before you is go back to first principles and examine what the bill does on a very practical level. I'll discuss the provisions dealing with prosecutions and specifically the new thresholds used to establish a contravention under both the Ontario Water Resources Act and the Environmental Protection Act.

Let's begin by acknowledging the fact that a problem currently exists in the province of Ontario. A recent report by the Ministry of the Environment SWAT team on environmental compliance in the Sarnia area found that almost 100% of facilities were in non-compliance with legislative or regulatory requirements and nearly 23% of facilities lacked a spill prevention plan or spill contingency plan. This is unacceptable. It suggests quite clearly that our pollution prevention and control regime is faulty and in dire need of repair.

We are also being suffocated by our poor air quality, which is a result, at least in part, of our inability to hold accountable the major air polluters. This week, CTV reported that an estimated 6,000 to 8,000 people die prematurely each year from air pollution. Toronto Public Health has published statistics showing that 1,700 people in Toronto alone die prematurely and another 6,000 are hospitalized each year for health problems related to poor air quality. These health effects can range from heart problems, asthma, bronchitis, reduced lung function, eye, nose and throat irritation, and even, possibly, increased risks of lung cancer. This too is unacceptable. There are too many contaminants being discharged into our air and, contrary to popular opinion, the pollution problem is getting worse and not better. Little is being done or can be done to prosecute those responsible. Bill 133 goes at least part of the way toward mending the problem by making it easier to prosecute hazardous releases into air

and water, thereby creating a stronger deterrent effect for polluting companies.

Let's turn now to the Ontario Water Resources Act. As you've been told today, Bill 133 includes a "deemed impairment" provision which amends section 1 of this act. The deemed impairment provision will allow the crown to prosecute when a discharge has the potential to cause harm. Without it, the crown needs evidence of actual harm, such as dead fish remains washing up on shore, before moving forward with a case.

Before delving into more detail about the impact of this provision, let me outline a common scenario for you. Suppose there is a plant in rural Ontario which discharges an effluent into a waterway. This effluent may not be toxic by its very nature, but it is released in such a large quantity, over such a short period of time, that it causes serious injury to the water quality and to organisms living in that water. The Ministry of the Environment becomes aware of the spill and initiates an investigation. However, as we all know, the province of Ontario is a pretty vast place and it could take ministry inspectors many hours or even days to respond. By the time they arrive to gather evidence and take samples, the inevitable has occurred: the discharge has become diluted. This presents a problem for inspectors and could ultimately be fatal to any attempted prosecution. Why? Because of a court case in 2001 called *R. v. Inco*.

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Prior to the *Inco* case, ministry officials had interpreted and used the Ontario Water Resources Act as a zero-tolerance piece of legislation. In other words, it was believed that a contravention could be made out if inspectors could show that a spill had the potential to impair the quality of any body of water. This is how the legislation was intended to be used.

However, the court, in *Inco*, created a sizeable loophole by holding that impairment depended on "the nature and circumstances of the discharge of that material, including its quantity and concentration, as well as the time frame over which the discharge took place." Thus, where the substance is not inherently toxic, inspectors need evidence that the spill occurred in such a concentration and over such a period of time as to meet the *Inco* test for impairment.

As you can imagine, this sort of evidence is very difficult to gather in circumstances such as those described above, where much of the necessary evidence may have washed away by the time inspectors arrive. Ask yourself this: If a spill occurs in a remote area and no one is there to gather samples, does it still create a harm? The answer is obviously yes.

Thus we arrive back at the deemed impairment provision of Bill 133. This provision does not represent new law, for it mimics other provisions that already exist within the Fisheries Act. In effect, it will allow the situation to revert back to that which existed prior to the *Inco* decision.

The main point to remember is this: The deemed impairment provision does not accomplish anything new,

nor does it attempt to; it simply fixes a problem that was created four years ago by the courts. Without this amendment, the prosecution of water spills will remain an unduly difficult task for the crown and the original intent of the Ontario Water Resources Act will have been defeated.

I want to now deal with the changes to the Environmental Protection Act as a result of Bill 133. The changed threshold in the EPA attempts to address a somewhat different issue in a somewhat different manner.

Currently, in order to establish a contravention, the act requires proof that a discharge is likely to cause an adverse effect. This is equivalent to saying that there is more than a 50% chance that an adverse effect will result for any given discharge. Bill 133 proposes to change this threshold to "may cause an adverse effect." In other words, a discharge would need to have the potential to cause an adverse effect. There is a very simple rationale for this change: to allow the same protection against air and ground pollution as is currently available for water pollution.

The Ontario Water Resources Act, even prior to the changes proposed in Bill 133, already creates an offence of discharging any material which may impair the quality of water. Two previous speakers here today have called the change "drastic." It's true, it is a change, but it's not an unprecedented one that would launch us into a period of unscientific or random prosecutions. Given the statistics I quoted earlier about smog pollution, there is clearly a pressing need to prevent releases into air as well as water.

At a practical level, the crown faces similar challenges when attempting to prosecute air offences. As difficult as it is to convict a company of an offence under the Ontario Water Resources Act, it is even more difficult under the Environmental Protection Act. Realistically speaking, only the most blatant infractions are now prosecuted under environmental legislation.

For instance, if there is a massive release into the air of a highly potent chemical and community residents become ill, the ministry may have the evidence to prosecute. However, most examples of air pollution are not this blatant. The poor air quality we experience today is the result of death by 1,000 cuts, and it is these thousand cuts that Bill 133 attempts to address.

In closing, I'd like to tie these threshold provisions back to the penalty provisions, which comprise the bulk of Bill 133. The penalty and prosecution regimes directly impact one another, and an appropriate balance must be struck between the two. Bill 133 goes a long way toward strengthening the utility of penalties, but we must be cautious not to neglect prosecutions. Prosecutions can achieve a deterrence effect beyond that which results from the use of penalties alone. There is a stigma associated with being prosecuted and convicted of an offence—and rightly so. Such proceedings are open to public scrutiny and thus a company's public image is at

stake. There is also little danger of Bill 133 opening the floodgates to crown prosecutions. The fact exists that the ministry has never relied heavily on prosecutions, and only a very small fraction of offenders is ever brought to justice in this manner. Bill 133 is unlikely to change this reality. What the bill will achieve is to make it easier for the ministry to prosecute those companies that have shown a blatant disregard for environmental laws in this province. For this reason, Great Lakes United wishes to express its support for the overall direction taken by this bill and urges you to maintain its necessary and long-overdue measures. Thank you very much.

The Chair: Thank you. We will have time for just one brief question, and, Mr. Barrett, it's yours.

Mr. Barrett: Thanks, Great Lakes United and Ms. Ginsburg. You indicate in your paper that Bill 133 helps fix problems by making it easier for the ministry to prosecute the worst offenders. I certainly agree with that. Some companies are laggards and some are leaders in environmental protection. I think of the Esso refinery just down from my farm. It's a very large refinery and relatively new. They do have spills. I consulted there. I've been in and out a number of times. They seem to be doing a tremendous amount to prevent these kinds of spills. I know you are pushing prosecutions, and much of this bill is about environmental penalties. It's not so much about spills; it's more about penalties. I'm concerned. Does that approach penalize those companies that do everything they can to prevent it? Their employees do everything they can. They have the training and the preventive measures in place. But with these environmental penalties, where there is no process to fight it or show due diligence, does that just put them on the same playing field as, say, another company I can think of in my riding that is less diligent? For a good company that is totally compliant and does its best, how is this going to make them even more compliant by getting these penalties?

Ms. Ginsburg: I don't think that it does create the situation that you are alluding to. From the penalties side, obviously they can still try to appeal a penalty. There are still appeal rights to the Environmental Review Tribunal. They can still attempt to show that they are not guilty of what they have been accused of. If they did not create the spill, if they did not cause the harm, they still have that opportunity available to them. Due diligence is still a defence in terms of the prosecution side of things.

Mr. Barrett: But not the penalties.

Ms. Ginsburg: There are still a number of factors that will be taken into account when determining how severe the penalty will be on the penalty side. So it's not my impression that they will be penalized without any regard to their attempts or to their past performance.

The Chair: Thank you for your deputation and to everyone for their time in coming today.

These hearings stand adjourned.

The committee adjourned at 1800.

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**Standing committee on
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**Environmental Enforcement
Statute Law Amendment Act,
2005**

**Comité permanent de
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**Loi de 2005 modifiant des lois
sur l'environnement
en ce qui concerne l'exécution**



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Monday 16 May 2005

Lundi 16 mai 2005

*The committee met at 0904 in committee room 1.*ENVIRONMENTAL ENFORCEMENT
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
SUR L'ENVIRONNEMENT
EN CE QUI CONCERNE L'EXÉCUTION

Consideration of Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters / Projet de loi 133, Loi modifiant la Loi sur la protection de l'environnement et la Loi sur les ressources en eau de l'Ontario en ce qui a trait à l'exécution et à d'autres questions.

CMD INSURANCE SERVICES INC

The Chair (Mr. Bob Delaney): Good morning, everyone. This is the standing committee on the Legislative Assembly. We are holding hearings on Bill 133, the Environmental Enforcement Statute Law Amendment Act, 2005.

Our first deputation this morning is CMD Insurance Services Inc.

Are you in the room? Please sit down. You have the luxury of the first word. Please begin by stating your name for the purposes of Hansard. You have 15 minutes for your deputation. If you choose not to use the entire time, it will be divided among the political parties for questions. The floor is yours; please begin.

Mr. Richard Drescher: Thank you. My name is Richard Drescher. I'd like to thank the committee for the opportunity to address issues surrounding Bill 133. I'm appearing here today representing my firm, CMD Insurance Services. I've been following the progress of the bill since its first reading in October. I've been involved in the ongoing consultations as a member of the board of directors of ONEIA, the Ontario Environment Industry Association, and have assisted them in developing that organization's position on this piece of legislation.

Speaking on behalf of ONEIA, I believe the organization agrees with the major thrusts of this bill, which include reduction in the number and severity of spills, swift consequences when spills occur, compensation for

victims of spills and to level the playing field between the good and bad actors.

During the formulation of the ONEIA position, there were a number of concerns that members raised, either for themselves or on behalf of their clients, that our firm agrees with. These include:

- allowing environmental penalties to be laid by front-line environmental officers, rather than someone more senior. We believe the ministry has indicated that this concern is being addressed and EPs are to be laid by the director.

- expanding the definition of spills covered from “is likely to” to “may” cause an adverse effect. We believe that's going to greatly expand the number of issues for industry.

- a one-year time period for the laying of an EP does not, in our opinion, constitute swift consequences, so we'd like that period shortened, if possible.

- the reverse onus on all officers and directors of a corporation for any contravention of the act seems too onerous. You could have a director in charge of marketing charged for something as simple as a proper form being filled.

- the ability to lay an EP for any contravention of the act or conditions of a certificate of approval. It was our understanding that EPs were to be applied for spills alone. We believe wording the legislation to include all offences, even if curtailed in the regulations, produces an unnecessary level of anxiety in the business community.

Where our organization diverges from a number of other organizations, including the position of ONEIA, is with respect to the appropriateness of large civil penalties. The concerns I have heard during the consultations on the bill can be summarized as follows: absolute liability associated with EPs, with no due diligence defence; and the counter-effectiveness of the large quantum of the EPs, together with absolute liability.

Our firm does not share these concerns. However, there may be the perception that our rationale may be viewed as self-serving. For this reason, we feel it would be inappropriate to express those views in any way that may be construed as being those of ONEIA. As such, I would like to stress that, despite my prior activity in putting forth ONEIA's position, I am here today expressing the views of CMD Insurance alone.

The concerns expressed above have been put forth in two arguments that I've heard against large civil penal-

ties. These arguments are: true accidents happen, even to the best-managed companies; applying a penalty to those companies without allowing for a due diligence defence is unfair.

The second argument would be, since large penalties can be levied without regard to due diligence, companies will do less, not more, to prevent spills, taking the attitude, "If we're going to get hit with a penalty despite due diligence, why bother with due diligence at all?"

My experience over the past 27 years of helping companies deal with risk suggests that this will not be the industry response if EPs are introduced.

Basic risk management consists of four steps. First, you identify exposures your company has to economic loss or risk. Second, you formulate strategies to handle that risk. Then, you select the appropriate strategies and put them into a coherent plan. Finally, you monitor the plan over time to address new risks as conditions change. This is fundamental business strategy that is practised, to one degree or another, by every company, small or large.

Companies that deal with hazardous materials have already been exposed to the risk of some sort of spill and the economic consequences of dealing with that spill. The introduction of EPs simply increases the financial cost if a spill were to occur. By the number of responses you have received on this bill, I believe you have done a good job of identifying to industry the exposure to this new risk. If EPs are introduced, companies will move on to the next stage of risk management, which is developing strategies to deal with this new risk. Basic strategies might include: eliminating the risk altogether, mitigating the risk, retaining the risk or transferring it to a third party.

Where possible and economically achievable, it is always best to eliminate the exposure to a risk. The presence of EPs may encourage companies to change their processes, which could involve the use or production of more benign products. If this becomes the case, it will benefit us all. Where it is not possible to economically eliminate the risk, companies can choose to mitigate the risk, such as putting measures in place to minimize the probability or severity of a spill. They may do this by installing better monitoring equipment, leak retention systems etc. Every company will evaluate the cost of investing in reducing the chances of a spill versus the cost of a spill when measured in terms of cleanup response costs, damage to their reputation and now the amount of expected EPs they might face. Companies are making that decision now, substituting the cost of EPs with the cost of providing a due diligence defence.

Once a company has done its best guess at the appropriate expenditures to eliminate or mitigate its risk of a financial loss from a spill, it has two choices: retain the remaining risk, or transfer that risk to a third party.

0910

The largest firms with the greatest financial resources tend to retain a higher level of risk, and so may look at EPs as an additional cost they will be forced to bear. However, these are also the companies that have the

financial resources to have the best systems in place to prevent spills in the first place. They also have the resources to respond to the spills quickly once one does occur and minimize their damage to the surrounding community. These are exactly the criteria that would allow them to eliminate or reduce the amount of any EP contemplated by the ministry through the agreements provision in clause 182.1(8)(c) of the bill.

Smaller companies may not have the risk tolerance or resources required to retain the same degree of risk as the largest firms. Thus, EPs may be viewed as more onerous on them. However, these firms have the opportunity to transfer this risk to a third party. Insurance is currently available that is specifically designed to pay for the cleanup and associated liabilities for a spill of a pollutant. Many small- and medium-sized firms already have this type of insurance in place. Insurance mitigates the effects of EPs for these firms in three ways: It provides a ready pool of cash to clean up a spill; insurers offering this type of policy provide access to 24/7 emergency spill response, as it is in their best interests to reduce the impact of any spill as much as possible; many policies also include coverage for fines, penalties and defence costs, where permitted by law, which would include these new EPs.

The quanta of the EP for companies with environmental insurance coverage in place should be minimized due to the rapid response to clean up a spill and being able to show that due diligence systems that were in place. Insurance companies will be checking for these systems when underwriting the policy originally. The EP will be just another cost in the insurance claim related to the spill. As the company who caused the spill would have a single deductible, or self-retained portion of the claim, the EP would have essentially no impact on that firm's overall costs related to the spill. The only cost that the firm may face is slightly higher insurance premiums once the additional cost of EPs filter through the system. However, I believe that any increase will be negligible, as simply having insurance available to pay for the immediate response to a claim will ensure that any EP levied will be small and, thus, only account for a small percentage of the overall costs of any claim.

Insurance can have a significant impact on achieving what we at CMD perceive as the goals of this legislation. It provides a pool of money to quickly respond to any spill and reduces the effect on the community. It provides funds to compensate the innocent victims who suffer a loss as a result of a spill. It levels the playing field between the good and the bad actors and provides third-party verification that companies have an effective environmental management system in place. Those companies with good systems will have a low risk of a spill, which includes many of the companies who have responded negatively to this legislation. This will translate into a lower cost of insurance. Those companies with poor systems and/or multiple spills will find insurance either expensive or unavailable. Those companies will be the ones that face the highest EPs, as they will not have

access to the pool of capital that insurance would provide to respond to spills. Their slower response and lack of effective spill management systems will negate their opportunity for negotiating lower EPs. If large EPs and other liabilities imposed by Bill 133 cause the bad actors to clean up their act or force them out of business altogether, the community will be better off, as will their competitors who are responsible corporate citizens.

Because of the protections afforded by insurance to smaller- and medium-sized companies with good environmental management systems, it's our company's position that there is no need to limit the application of EPs to just MISA companies. They can be an effective tool for ensuring that companies all of sizes have appropriate systems in place to prevent spills.

The Chair: Thank you very much. We have time for one question—two if they're very brief—from each party, beginning with Mr. Barrett.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): Thank you for your presentation. Very briefly, with respect to absolute liability for environmental penalties—I missed the first part of your presentation. On the issue of due diligence, if you had one wish, is that the most important priority, to see a change in this legislation?

Mr. Dresher: Personally, no. The fact is that for a small or medium-sized company that has environmental insurance in place, those EPs—the environmental penalties—are part of the coverage. When they look at a risk to offer insurance, they want to make sure that the environmental management systems are in place. If a true accident happens, that's what insurance is for. The basic premise is, if you get hit by lightning or destroyed by a tornado, it's not your fault—that's why you have insurance—and it would be the same thing with this. It's just another cost to the claim.

Mr. Gilles Bisson (Timmins-James Bay): I've got a theoretical question. If this legislation, in its current form, were to pass, at the end of the day would that mean for insurance companies that they would be paying out fewer claims, because supposedly the polluters would be less likely to pollute because of the liability?

Mr. Dresher: It's possible.

Mr. Bisson: That's all I wanted to know.

Mr. John Wilkinson (Perth-Middlesex): Richard, thanks for coming out. Actually, my background is in insurance, so I enjoyed your presentation this morning, but I'm on the other side of the business. I'm a certified financial planner.

Just getting back to the question of risk management, one of the things that struck me about this bill—you were talking about the un-level playing field between those companies that are just wonderful environmental stewards and those that are not, and there's a difference. Obviously, the insurance industry knows that as well, and the EPs will bring this into focus. My question has to do with—we have kind of a patchwork. In the MISA sector, about half of the companies have spill contingency plans—in other words, if a spill happens, we know what to do and have a plan to react—but half don't. Very few

companies have spill prevention plans which say, "What do we need to do to make sure we don't have a spill?" This bill proposes to mandate spill prevention.

In your professional opinion, if all of those companies had to have spill contingency and spill prevention, your contention would be that their insurance costs would go down, because they were mitigating their risk. Is that correct?

Mr. Dresher: Absolutely. Insurance companies look at the chance of a risk. People with a high risk of having a spill pay higher premiums. People with a low risk have lower premiums. A factory that has a sprinkler system in place pays less in insurance premiums than one that is made of wood and is—

Mr. Wilkinson: If it costs money to have the sprinkler system, they're just offsetting that with the fact that their costs for insurance would go down. In other words, the company, from a corporate level, has to look at that.

Mr. Dresher: Correct. The other thing is that studies for large claims in the insurance sector have suggested that probably only 50% of a large claim, the true economic cost to a company, is actually covered by insurance. So companies who have large claims, whether they be spills or whatnot, suffer other economic loss that you just can't have insurance for. One of them, in a spill situation, is loss of reputation; you can't buy insurance for that. In other insurance situations, if your factory is destroyed and you can't operate, you have lost opportunity costs, because you can't bid on a contract without a factory. You may have customers that go to seek alternate suppliers while you're down and find they like them better and never come back.

Studies—primarily in the United States, but they're just as valid here—suggest that if you have a large claim, only about 50% of that cost is going to be covered by insurance. So the fact is that putting in prevention systems isn't going to be completely offset by the insurance cost, but you're always better off not to have a claim than to have good insurance in place.

The Chair: Thank you very much for coming in this morning.

ENVIRONMENTAL DEFENCE CANADA

The Chair: Environmental Defence, Sarah Winterton.

Good morning. You have 15 minutes before the committee this morning. Please begin by stating your names for the purposes of Hansard. If you leave any time remaining in your deputation, the time will be divided among the parties for questions. The floor is yours. Please begin.

Ms. Sarah Winterton: Sarah Winterton, program director, Environmental Defence.

Mr. David Donnelly: David Donnelly, legal counsel to Environmental Defence. I'm with the firm of Gilbert's LLP.

Ms. Winterton: Good morning. Thank you very much for the opportunity to make this presentation on Bill 133.

First, I wanted to give you a little bit of background on Environmental Defence. We're a national charitable organization founded in 1984. We work for stronger legislation that will protect the environment and human health, to educate and engage people in solving environment problems, and with citizens' groups involved in legal action or tribunals.

0920

In considering the need for Bill 133, Environmental Defence strongly supports Bill 133 in principle, but with amendments to ensure that it will do the job of decreasing the amount of toxic contaminants released into our waterways, air and land effectively. Bill 133 is needed to address the crisis of increasing amounts of toxic contaminants entering the environment from industrial spills. MISA facilities accounted for 84% of reported liquid spills by volume in 2003 and 97.9% in 2004.

A few more details on that time period: From 2003 to 2004, reported spills by MISA facilities included an increase in frequency by almost 13%, an increase in average volume for liquid spills from approximately 15,000 to 55,000 litres, and an increase in average weight for solid spills from about 200 kilograms to over 1,000 kilograms. The spills ranged in volume from less than one litre to over 18 million litres, equivalent to 900 tanker trucks. That would have been a lot of beer spilled last week on the 401. The available Ministry of the Environment data indicates a six-fold increase in the number of water treatment plant intake closures across the province due to spills from MISA facilities during this time period.

The people of Ontario and their communities, as well as Ontario's fish and wildlife, which depend on natural habitat for survival, have needed a strong and effective enforcement bill for some time. While the focus has been on the dramatic increase in reported volume of spills over those two years, Environmental Defence submits that the reported spills by MISA facilities in 2003 were already indicative of the need for Bill 133.

The Ministry of the Environment's report, *Industrial Spills in Ontario*, May 2005, details some incidents in 2004 that are worthy of a closer look. On February 1, 2004, the Imperial Oil refinery in Sarnia spilled 157,000 litres of methyl ethyl ketone and methyl isobutyl ketone into the St. Clair River. You're all aware of this accident, which shut down water treatment plant intakes for Wallaceburg and Walpole Island First Nation for three and four days respectively. Extensive monitoring was required for one month, at which time the plume had dissipated. Methyl ethyl ketone and methyl isobutyl ketone are harmful to human health. Methyl isobutyl ketone is a suspected developmental toxicant, gastrointestinal or liver toxicant, kidney toxicant, neurotoxicant, respiratory toxicant and skin or sense organ toxicant. In addition to all of the above, methyl ethyl ketone is a suspected cardiovascular or blood toxicant.

In another case cited in the MOE's report, on October 24, 2004, Goldcorp Inc. spilled mine effluent containing

arsenic directly into Red Lake. Consequently, 300 residents in the municipality of Red Lake were forced to use an alternative supply of water for two days. Arsenic is harmful to human health and the environment. It is a suspected carcinogen, cardiovascular or blood toxicant, developmental toxicant, gastrointestinal or liver toxicant and neurotoxicant. In fact, it is ranked as one of the most hazardous compounds—within the worst 10%—to ecosystems and human health.

The list of spilled contaminants as reported by industrial facilities to the MOE is extensive and includes acid solution, benzene, black liquor, chrome-plating solution, hydraulic oil, hydrocarbons, hydrochloric acid, ethylene glycol, oil, mill effluent with arsenic, process water—which contained styrene, ethylbenzene, benzene and toluene—pulp mill effluent, sulphuric acid, tar, transformer oil, vinyl chloride etc.

Just looking at one of these compounds, benzene is very harmful to human health and the environment. It is a known carcinogen and developmental and reproductive toxicant, a suspected cardiovascular or blood toxicant, an endocrine toxicant, gastrointestinal or liver toxicant, immunotoxicant, neurotoxicant, respiratory toxicant and skin or sense organ toxicant. Again, it is ranked as one of the most hazardous compounds—within the worst 10%—to ecosystems and human health.

In short, these spills mean contamination of the environment by harmful chemicals. Bill 133 must be effective to decrease the volume of these toxic substances entering our air, water and land.

Environmental Defence is not confident that this change will occur without strong legislation. In fact, our lack of confidence in industry to put the protection of the environment and human health as one of its first operating priorities is well founded. The recently released report by the MOE's SWAT team titled *Environmental Compliance in the Petrochemical Industry in the Sarnia Area* revealed that almost 100% of facilities inspected, 34 out of 35, were found to be in non-compliance with one or more legislative and regulatory requirements; 23% of the facilities inspected either had no spill prevention plan or spill contingency plan or just had one of the two; and more than 260 instances of non-compliance with environmental legislative and regulatory requirements were identified.

We see a number of benefits to environmental penalties, and Bill 133 begins to address some of the problems I've just outlined.

We strongly support the move to lower the threshold for prosecutions in the Environmental Protection Act so that it is sufficient that an action "may" cause harm instead of "is likely to" cause harm to either the environment or public health.

Bill 133 will provide a simpler approach to collect and recover money from environmental damages, encourage companies to develop new innovative approaches to protect our environment, help companies to protect the environment, and target companies that damage the environment.

The benefits of environmental penalties are numerous.

Cost savings: Compared to engaging the criminal prosecution process, levying EPs is inexpensive.

Time savings: Compared to engaging the criminal prosecution process, levying EPs is fast.

Deterrence: It ensures that minor breaches are not ignored, since there is no need to engage in an expensive and time-consuming criminal process. Proof is on a balance of probabilities, not the higher criminal standard of proof beyond a reasonable doubt. It eliminates any economic benefit that may be created by non-compliance.

Implementation: It's a simple process, with no court intervention necessary to levy penalty, and increases the likelihood that non-compliant persons will pay for their environmental damage, thereby lowering the chances that such persons will gain any economic benefit from non-compliance.

Lack of stigma: EPs are not designed to be penal, and thus avoid the expensive and time-consuming penal process. They supplement the criminal process. The same legislation can address both EPs and criminal prosecutions. Issuing an order requiring payment of an administrative penalty does not prevent the crown from prosecuting the same offence.

Finally, it's fair: Procedural fairness is protected; orders may be reviewed and/or appealed.

Bill 133 is not unique. Many jurisdictions use administrative penalties as a mechanism to deter non-compliance with environmental legislation. Administrative penalties have been used in Canada for quite some time and have been incorporated into environmental and non-environmental pieces of legislation. Administrative penalties are common in American environmental legislation as well. I've appended a short report for your consideration.

Our recommendations to strengthen Bill 133 include expanding section 18, which allows MOE officials to require facilities to develop and implement plans to prevent and reduce pollution; requiring the MOE to provide annual reports on the operation of Bill 133; making public all settlement agreements; and providing assurances that Bill 133 will be expanded to phase in other sectors, such as smaller facilities and the transportation sector, over time.

In conclusion, thank you once again for the opportunity to address the standing committee. We urge you to move quickly to pass the legislation and improve environmental protection in Ontario.

The Chair: Thank you very much. We should have time for a question from each caucus, beginning with Mr. Bisson.

Mr. Bisson: Thank you for your presentation. I appreciate the work that you do. We all understand the importance of having strong regulation and fines. In the event that a polluter pollutes the environment, we need some sort of mechanism to deal with the case after the fact.

But I'd be interested to hear what you have to say about what we can do to try to prevent spills in the first place, what kind of prevention initiatives or legislation you think we'll be able to put forward to try to deal with this issue before it ever becomes a spill. It seems to me it's always the penalty, the penalty, the penalty. We're not doing enough, in my view, to deal with what we need to do ahead of time.

Ms. Winterton: I agree with you. Pollution prevention is the primary step that companies need to take, so we are urging that pollution prevention plans be made mandatory for all companies. That's what they need to do.

Mr. Bisson: Should that be part of this bill?

Ms. Winterton: We believe so, yes.

The Chair: Mr. Wilkinson.

Mr. Wilkinson: I'm sure you'll be delighted to know that the minister was here on Friday and mentioned the fact that she's quite interested in making spill prevention plans mandatory for the MISA sector in this province. I'm sure you'd agree.

I just want to talk about your suggestion. You're the second group to come to us about making settlement agreements transparent in this province. Under the arrangement that we have with environmental penalties, companies are able to deal with the ministry on a proactive basis as they look to the things that they have been doing to try to mitigate the spill, rapid response and the type of behaviour that we need in the unfortunate event that a spill happens.

0930

One of the criticisms has been—you're the second people to mention this—that the settlement agreements that could be entered into between the company and the ministry are not transparent. There's a suggestion that we actually post these on the EBR, the Environmental Bill of Rights. Would you be in agreement that that would be the best and most transparent way to get these things out to the general public? If someone is in a community that's been affected, the ministry has come in and put in an environmental penalty and there has been this to and fro between the ministry and company—is that the best way to get this to be transparent?

Mr. Donnelly: We absolutely support as much transparency in the process as possible. The right to pollute is in fact a privilege. One of the mistakes we've made, I think, in Canada, is to assume that you can put anything you want into the environment and not be responsible for its release. In our communities now, when there are offenders who are dangerous to the community, we let the community know. We post notices; we let parents know that there's a risk to their children. I don't see why contamination of drinking water should be viewed any differently. We should take every step possible to make sure that people know what's going into the community.

I was in the room in Walkerton when Premier Harris apologized to the people of Walkerton. One of the promises he made to the citizens of Ontario was that we would stop polluting drinking water in Ontario for all

time, once and for all. This bill goes some way toward fulfilling that promise, but not the full way. One of the things we need to do, as your suggestion so rightly puts it, is to make people aware of the releases into the environment and how we can clean them up.

People should have a right to be at the table. It's all our drinking water. The right to pollute is a privilege. You don't give people the right to drive a car at 200 miles an hour; we shouldn't give people the right to pollute drinking water.

Mr. Norm Miller (Parry Sound-Muskoka): I missed Thursday's hearings because I was up in my riding attending the Federation of Northern Ontario Municipalities conference. One of the presentations there was pretty interesting. It was an hour-long presentation from a company that's in the environmental business of relining old sewer pipes in industry. They had a very impassioned presentation on protecting water. So I was saying, "I'm going to be at committee hearings on Monday. Can you give me some advice? Do penalties work? What's the best way to work toward achieving the goal of less pollution?"

Randy Cooper from Evanco Environmental felt that being proactive and getting industry to have plans in advance of pollution is the best way. He hadn't seen this bill in detail, but I understand the main part of this bill is bringing in EPs, environmental penalties. Have they been found to work in other jurisdictions, and can you outline some of the other jurisdictions where they've been successful?

Mr. Donnelly: Administrative penalties are a common enforcement technique across North America. There's nothing unique or unusual about them. They are not the answer. They are not going to solve the problem of discharge into the environment. It makes it a little easier to enforce the existing laws that we have.

Take a place like Texas. If Erin Brockovich had been born in Ontario, she'd be Erin Who? I've read the submissions from industry, and they say that this bill violates the principles of natural justice. Well, why don't we have jury trials in Ontario when there's a release into the community, so that a jury of the peers of the corporation that has polluted the drinking water—it actually has to face the people whose lives they've affected and potentially harmed? If you want to talk about natural justice in the province of Ontario, why is it that under the Cemeteries Act, we still allow people to unearth aboriginal gravesites and ship them around the province? Natural justice? We've got a long way to go in this province before we address some of the fundamental fairness issues about how we treat the environment.

I'm sympathetic to industry; they want a level playing field, transparency and enforcement. If they wanted real enforcement, they would advocate and recommend, as we do, that we reform the tort process in this province so that people have access to real justice. Administrative penalties? You don't like this bill? You want to see natural justice in the province of Ontario? Great. Open up

our courts so that we have real justice the way they have in places like Texas.

The Chair: Thank you for your deputation this morning. That concludes your time.

CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

The Chair: The Canadian Institute for Environmental Law and Policy.

Please be seated and make yourself comfortable. You have 15 minutes for your deputation this morning. Please begin by stating your name for Hansard, and then the floor is yours.

Ms. Anne Mitchell: Good morning, Mr. Chair, ladies and gentlemen. My name is Anne Mitchell. I am executive director of the Canadian Institute for Environmental Law and Policy, also known as CIELAP. CIELAP was founded in 1970, with the mission to provide leadership in the research and development of environmental law and policy that promotes the public interest and sustainability. Our vision is a world where the right to a safe and healthy environment is included as a basic human right.

Thank you for giving me the opportunity to speak with you this morning on Bill 133, the Environmental Enforcement Statute Law Amendment Act, otherwise known as the spills bill. We are impressed, and we applaud the inclusion of a polluter-pays-related provision, with a funding mechanism to clean up spills.

You will have received from the clerk a publication and some maps which I hope will assist you in considering this bill.

While we have not done a line-by-line analysis of Bill 133, we have monitored the bill's process closely. We have spoken positively about the intent of the bill. We have appeared in newspaper articles asking why it has not moved further faster and citing the abysmal record of some Sarnia-area companies, as revealed in the recent SWAT report, as evidence of the need for the bill. We have also reflected on the activities of Mr. Kinsella and the Coalition for a Sustainable Environment.

Our position on spills is one that I hope everyone in this room, and all the presenters, including those from industry, agrees with, and that is that spills are bad and should be avoided. While this statement may seem trite and perhaps simplistic, that is in fact why we are in this room today. While some may argue that the increased number of spills is a product of better record-keeping and more enforcement, the current trend line of increasing numbers of spills with larger volumes of pollutants released is not the one we want to follow.

You have heard it before: Spills by MISA facilities increased in frequency between 2003 and 2004 by over 12%, with the average volumes of liquid spills increasing nearly fourfold.

Obviously, we need to stop spills, be it into the air, land or water. Clearly, spills have the potential to harm human health and impact the environment. There is a

need to clean up previous spills, better understand the cumulative impacts of even small spills and reduce the number of spills.

Our goal should be that the Great Lakes and rivers in Ontario are swimmable, fishable and drinkable for our grandchildren.

So what is the appropriate response from the Ontario government, particularly the Ministry of the Environment? Ontarians expect their government to ensure that the air, land and water are safe. It is the government's responsibility to ensure that the air, land and water are safe. Therefore, the government has to act.

0940

The Ministry of the Environment is proposing to amend the Environmental Protection Act and the Ontario Water Resources Act to strengthen the administrative penalty provisions in these two acts. The specific proposal is a new environmental penalties framework.

I am appalled by how the industrial special interests in this province have lobbied against this bill. There is no doubt there were many chuckles in Bay Street law offices and boardrooms when Mr. Kinsella circulated the Coalition for a Sustainable Environment letterhead. While it is stereotypical to say that many in the environmental community have no sense of humour, I will admit to finding nothing humorous about the lobby against this bill. I find it disturbing and distressing. It is shocking that some Ontario industrial leaders have opened their chequebooks to lobby against this bill.

During the past few weeks, I've had conversations with three different industrial leaders. Each has claimed that he supports the intent of the bill. In one meeting, it was pointed out by several there that when industry is challenged, it resorts to its old tricks: Put up money to lobby against what industry does not like. A more courageous act of leadership would be to stand up and say, "OK, fellas"—because it is mostly fellas—"you and I know that for the sake of our grandchildren we need to stop spills and clean up our act. How can we work with others who are also concerned about the future of their grandchildren to get a bill that will work, that will result in reductions to the number of spills to our air, land and water?" This is not happening. Instead, industry lobbied, and is lobbying hard, to subvert this bill.

Obviously, environmental groups have to respond, and you're back to your classic "us" and "them," rather than people coming together to find a solution to an issue: how to stop spills. Have we not learned anything over the years? What happened to "Choose change"? We need to work together to clean up our environment. We need to establish better working relationships, regulatory agencies, industries being regulated, and communities. How can we make sure that the proposals are going to bring bad actors into compliance?

As well, environmental groups want the bill strengthened. Facilities should have pollution prevention plans and should report on how they are doing. And where is consideration of extending the coverage to non-MISA facilities?

The public has a right to know what is happening to the air they breathe, the water they drink and the land where they live, play and grow their food. But, above all, the Ministry of the Environment needs to have the financial resources so it can enforce its current legislation. We are pleased to see an increase for the Ministry of the Environment in the recent budget.

I think the main message I want to leave with you today is that the Ministry of the Environment has been starved of resources. Environmental legislation has not been enforced and spills have increased. The polluter must pay. The citizens of Ontario want the minister to take action to stop spills. Our health, the environment and our grandchildren's future depend on action by this government.

Mr. Chair, I wish you and your members every success in your deliberations. Thank you.

The Chair: Thank you. We should have time for one brief question from each caucus, beginning with Mr. Wilkinson.

Mr. Wilkinson: Good morning, Anne. Thank you so much for coming. You have a great deal of experience in regard to the process of legislation in this province over the last few decades, and we appreciate your coming here today and supporting the bill.

My question specifically has to do with a proposal we've heard about the need to make the environmental penalty process transparent for all people. Of course, we believe that if you spill, it shouldn't be the taxpayer picking up the tab; it should be the person who spills. We have a process that allows companies, particularly the ones that are great environmental stewards, to have a process where they deal with the ministry in regard to settlement, so that we're acknowledging good behaviour. That is something we're trying to do with this bill: encourage good behaviour. A lot of industry groups have come to me and said, "We've got great environmental track records." They want us to help level the playing field, because they're not so happy with their neighbours in the industry who have gone to the lowest standard. Are you in support of making sure that that process is transparent so that the public can see that?

Ms. Mitchell: I think any effort to make information available to the community and to make the process transparent is beneficial, is good. I would assume that the good actors want the communities to know their good actions and the bad actors don't want the community to know their bad actions. So I think it would help.

Mr. Barrett: Thank you to the Canadian Institute for Environmental Law and Policy for the presentation. You make two requests. One is that facilities should have pollution prevention plans. This bill, this legislation, does not mandate that. Have you lobbied as well? Have you put forward a suggested amendment?

Ms. Mitchell: No, not specifically to the Ontario government. Our work in that area has been directed more to the federal government. One of the documents I gave you is The Citizen's Guide to Pollution Prevention. In that, we talk about the need for pollution prevention

plans. We've suggested that the federal government make these mandatory, but it would be good if they would be considered as part of this bill as well.

Mr. Barrett: The second recommendation was consideration to extend coverage to non-MISA facilities. I understand this law already covers all industries. It would require an amendment to delete those smaller industries. Is that your understanding?

Ms. Mitchell: I don't expect it to happen in this round, but eventually you might want to use this bill to cover other facilities that are—

Mr. Barrett: I think it already does.

Ms. Mitchell: OK.

The Chair: Mr. Bisson.

Mr. Bisson: I appreciate your presentation. You would know that in the past, some budgets ago, the Ministry of the Environment lost about half of its budget.

Ms. Mitchell: Yes.

Mr. Bisson: You made a comment just now that you're glad and supportive of the increases that we got in this year's budget. I just ask you this question: The ministry is barely able to hang on and do what's got to be done now. I know, talking to the people in the water division, that when it comes to spills, they are not able to investigate even what's going on now. How is this bill going to work if we don't have the enforcement, considering there hasn't really been an increase in this budget? It's basically flatlined.

Ms. Mitchell: I think we tried to say that. I know that my organization, during the previous government, monitored on an annual basis the way the Ministry of the Environment was being gutted, of personnel and of budget. At one point when we released our annual report, the then Minister of the Environment told us that we were a bunch of poets and lawyers, telling half truths.

Of course the ministry needs to have the resources to enforce the legislation, and I think your comment is well taken. The resources have to be found for the ministry to enforce this bill.

The Chair: Thank you very much for coming in this morning.

ONTARIO MINING ASSOCIATION PLACER DOME CANADA

The Chair: The Ontario Mining Association and Placer Dome Canada, please.

Mr. Bisson: Welcome back, Chris.

Mr. Chris Hodgson: Good morning. How are you doing, Chair?

The Chair: Very well. I'm sure you're familiar with the drill here, but, very briefly, you have 15 minutes before us this morning. Please begin by stating your name for the purposes of Hansard. The floor is yours; kindly continue.

Mr. Hodgson: Thank you very much, Chair and members of the committee. My name is Chris Hodgson and I'm the president of the OMA. With me today is

Ross Gallinger, vice-president of sustainability with Placer Dome Canada.

Thank you for giving the Ontario Mining Association time on the agenda today. While many of the submissions to the EBR and the committee are from our industry, we wanted to take the opportunity to speak to you first-hand.

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Since 1920, the OMA has represented Ontario mining companies. Our more than 50 members are engaged in exploration, mining, smelting, refining and providing services to the industry. We have a long history of working in concert with government to ensure our province is the envy of the world. Our members believe in and indeed practise measures to protect the environment. Their families live in the very communities these mines operate in and, obviously, they place the highest concern on the safety of those communities.

We have some major concerns with Bill 133 and its consequences for mining operations in Ontario. I'd like to begin with a bit of an overview of the mining industry and some general concerns with the bill and then Ross will go into more detail, hopefully leaving us enough time for questions.

Mining today is a modern, safe, environmentally responsible high-tech industry. Mining takes place in all parts of the province and all of the province benefits from the social and economic contributions of the mining industry. The mineral industry cluster in Ontario is estimated to employ more than 197,000 people, with an annual payroll of \$9.5 billion. The safety performance of the industry in Ontario is among the best in the world. Along with improvements to safety, our operations have a new environmental focus: We are voluntarily cleaning up decades-old abandoned mine sites. Our member companies have no legal liability for these messes created by other companies before closure plans were a requirement; however, it is the right thing to do and, therefore, we are doing it.

The two MISA sectors for mining—metal mining and industrial minerals—are over 99% in compliance with meeting the discharge limits set by the ministry. Even within that allowable discharge, our members, on average, run at only about a quarter of the limits.

Mining produces the raw materials that help society keep its standard of living, including those products that help protect the environment. The modern world could not exist without mining, and we certainly could not make Ontario businesses and homes environmentally friendly without the employment of the products of mining.

For example, without the palladium from northwest Ontario, we could not make catalytic converters for our cars—a major help to air quality. The calcite mined in southeastern Ontario, when used as a filler, reduces the quantity of petrochemical feed needed to make plastics and paints, and the number of trees needed to make paper. It also reduces the amount of energy needed to

make all of these products. Everything from solar cars to energy-efficient homes rely on minerals we produce.

Given that, we know that mining is only going to grow in the world. The question is whether this growth will occur in Ontario or not.

Toronto is the mine-financing capital of the world. But ore bodies don't come with guarantees, and keeping that money in our province depends on a number of factors. Investments are large and yet prices are globally set. Returns take time, if they come at all.

We are blessed with natural mineral deposits, but so are a lot of other places which have lower energy, transportation and labour costs. If Bill 133 is passed, it will have a direct impact on the ability of Ontario companies to compete, because it takes away the one advantage we have: clear laws with predictable costs. The Mining Act and closure plans are clear and consistently applied. Certificates of approval and MISA rules are clear, and we have practices to meet them.

Our concern with Bill 133 is that primarily it changes the certainty of operating compliance costs. This is not about the penalties or the principle of you spill, you pay. That is motherhood and apple pie—everyone agrees with that. It is the concern that you are going to pay whenever the government asks you to pay, regardless of the negative impact on the environment or the best practices we invest in.

This bill is characterized as a spills bill. It is, in effect, much broader than a spills bill and affects the everyday allowable discharges mining companies comply with.

We regret that this bill was introduced with no consultation and that it has become so divisive. We could have worked out common ground with environmental groups and others for a better bill for the environmental protection of Ontarians. However, we do thank the minister for listening to our concerns and we thank her for having first reading hearings.

We look forward to seeing the actual wording of the amendments the minister mentioned on Thursday. In general, we appreciate that some of the concerns are being addressed with the proposed amendments that (1) only a ministry director can impose an environmental penalty, not a provincial officer, (2) the environmental penalties shall only be imposed against the company, and therefore an individual employee is not disincented from reporting even the smallest spill, and (3) the environmental penalties are not an admission of guilt, and whether a company tried to prevent, minimize or clean up a spill will be taken into account, and a court shall consider the environmental penalties in determining the amount of the fine.

What are still outstanding are four general areas of concern. The first major concern, which causes uncertainty of the rules, is a change to the Environmental Protection Act, section 14(1). At the moment, the EPA has regulations, permits and approvals in place that allow for discharges of contaminants up to a prescribed limit as long as there is no adverse effect.

Under section 3 of Bill 133, uncertainty comes into the process by making every discharge of a contaminant a contravention. Specifically, this is done by striking out "that causes or may cause an adverse effect." Today's laws give an environmental protection guarantee against adverse effect beyond any regulation, permit or approval. Removing the adverse effect condition could make all regulated and permitted limits void.

Essentially zero discharge becomes the new limit for everything. This cannot be enforced as written. The result is that Ontarians will be left with uncertainty as to when they may be subject to enforcement action. This change to the EPA, we assume, will be in force for all Ontario citizens and businesses, not just MISA-reporting companies.

The second major concern is that the bill encompasses changes to the Ontario Water Resources Act. It should be noted that this too affects all Ontarians, not just MISA companies, which the government has stated is their target for reform.

Currently, our members cannot discharge material that may impair water quality. Section 28 of the OWRA states that even if water quality is not or may not become impaired otherwise, it is deemed to have been impaired if the material discharged may cause injury to any person, animal, bird or other living thing.

Under section 2 in Bill 133, the definition "deemed impaired" is much more stringent than the existing wording. The proposed definition will include the test for any organism, whether or not that organism lives in that habitat. In essence, it appears the government is trying to say that even the discharge of non-inherently toxic substances will be prohibited.

This is impractical, and I would argue that the general public would understand this is impossible and unnecessary to implement in the real world. This should be debated in a separate bill as it does not apply to the slogan, "You spill, you pay." It should be debated about the science and the practicality of this measure.

Is the law clear to golf course owners, small business people, ordinary residents of Ontario and MISA reporting companies? What are the practical, consistent enforcement standards for discharges that end up in our surface and groundwater? This applies to all Ontarians and leads to the basis of enforcement of the Ontario Water Resources Act, and therefore requires consultation with the public at large, we believe.

I'd like to now turn it over to Ross.

Mr. Ross Gallinger: Our third major concern is the proposed change of the wording "cause or are likely to cause an adverse effect," to "may cause an adverse effect." The wording affects the notification provisions, the spills notification, mitigation and compensation provisions, and the order-making provisions in the acts.

While it is reasonable to prohibit and require notification and remediation of discharges of contaminants that "cause or are likely to cause an adverse effect on the environment," it is not clear that discharges that "may

cause an adverse effect" should be regulated the same way.

Essentially, we're talking about uncertainty again, and this aspect moves "adverse effect" to a more qualitative aspect than a scientific-based quantitative effect.

Our fourth concern has to do with the new fine structure and penalty sections. The fine structure needs to be clarified that it does not go up on self-reported exceedances. Currently, under C of A's there is a requirement to self-report aspects in terms of non-compliances.

Bill 133 changes the existing three-tiered fine structure to a prescriptive two-tiered fine structure. The offence in the top tier includes "discharge of a contaminant" and "exceeding discharge limits set in regulations, certificates of approval, permits or orders" whether or not there was a risk of an adverse effect or it resulted in an adverse effect. For our operations, at times we're reporting non-compliance aspects that may be analytical errors, as an example, and whether these apply in terms of the fines.

The other aspect is the additive fine structure that's contained in these changes. The uncertainty of what the government may do around the fines, not just the penalties, creates uncertainty of costs for our mining operations. Do the present C of A's apply or not and will they apply in the future? These are concerns all around uncertainty in terms of where this legislation will apply to our operations in the future, and that's why we're talking about our concerns.

Mr. Hodgson: In regard to environmental penalties, which the minister has stated will only apply to MISA members, you have heard from coalition members and others about their concerns around due process and rights of appeal etc.

We have some additional questions. Companies right now are required to clean up spills and mitigate and pay for damages, and that'll be the same under the new bill. Is this penalty on top of those costs, and will the community fund being set up from these penalties be used only in the community of the spill? Who has access to these funds? Is there going to be a mechanism for paying grants to NGOs? What transparency of the books will be required from groups or individuals who receive monies from this fund?

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In summary, Mr. Chair and members of the committee, there are four areas we would like to see changed or clarified: the uncertainty around the EPA, to have consistent application of the law; removing section 28 of the OWRE, which should be a separate bill; the uncertainty created by changing "likely" to "may" throughout the bill; and the environmental fines and penalties and questions around the community fund.

Hopefully we can make this a better bill, more focused on preventing and cleaning up spills, with the polluter paying the costs. We'd like to again thank you for your time and hearing our concerns.

The Chair: Thank you. We should have time for one brief question, about a minute from each caucus.

Mr. Miller: Thank you for your presentation today. Mr. Gallinger, you were at the same conference I attended, FONOM, just a few days ago. At that same conference, as I was mentioning, my first opportunity to ask a question was to a presenter from an environmental company that's in the business of lining industrial sewer pipes. It's an Ontario-based company which has done most of its work down in the States. They've spent about 10 years down in Richmond, Virginia, working on lining sewers. Having sat through that presentation, I mentioned that I'd be here on Monday and I wanted that person's comment about this bill and whether penalties are the right way to go.

You're saying you're 99.6% in compliance, and that when you've not been in compliance in terms of spills, you've been self-reporting right now. I guess my question is, are environmental penalties going to help, or are they going to make industry not report exceedances because they know they're going to be paying a fine if this new law comes into effect?

The Chair: It was a long question, but it needs a brief answer.

Mr. Gallinger: OK. I can tell you from my perspective that we will continue to report non-compliances. There will be those issues, because there are things that are out of our control. There are also aspects in terms of what is non-compliance. Let me give you a typical example: If the speed limit is 90 kilometres, and you go 91 kilometres, we'd have to report that, if it were an environmental aspect. Whether that has a significant effect on safety, in terms of speeding etc., is questionable. We will continue to report those things from our company's perspective, but you have to question whether others may try to find some way of not reporting those incidents.

Mr. Bisson: Other than Mr. Peterson and myself, most people wouldn't understand the difficulty there is in trying to bring a mining project to actually becoming a mine. The reality is, how much money do you have to spend in exploration to ever get a project as a mine? I guess my question is that, in trying to raise the dollars necessary to do the type of exploration that's needed in order to possibly find a mine, how will this bill impact on the ability to raise dollars for explorations?

Mr. Gallinger: The issue will revolve around aspects of uncertainty in terms of the legislation and the ability to comply. When it becomes much more difficult to have certainty around what the rules are and how to conform to those rules, it will fall into a decision as to where you want to place your money and your investment going forward.

Mr. Wilkinson: I was just looking at a review: the concern about having an environmental penalty if you're actually within your certificate of approval. I can assure you that we've clarified that to make sure that there would never be an environmental penalty applied to a discharge that was within a company's certificate of

approval. You're right; that would be counterintuitive and counterproductive. We'll try to make sure we have whatever clarity we need for the industry.

Just taking a look at some information I have on metal mining, it seems that almost all of your industry in mining, voluntarily—not ordered by the minister but voluntarily—has both spill prevention and spill contingency. We want to congratulate the industry. I'm sure that when the minister said last week that we'd be mandating spill prevention, that would be something the vast majority of your companies are already doing. But I note that despite that, there are many instances in 2003-04 where spills in exceedance of the lawful certificate of approval have happened.

The Chair: I need you to come to a question.

Mr. Wilkinson: So I guess my question is, won't environmental penalties, in your opinion, help you within your own industry raise that standard? Because you have some companies that are doing it, and some that are not; and that's not fair. So your comment on that, Chris?

Mr. Hodgson: That's a good comment. A lot of our companies have implemented ISO 14001 standards and others, which cost a lot of money to bring in. We want to incent everyone to report even the most minor spills so that we can get a handle on it and correct the processes. Environmental penalties only apply, according to the minister's amendments, to MISA-reporting companies. Some of the examples at Ross's company, Placer Dome, wouldn't have been covered under that amendment. They're non-operating mines. The one spill that's mentioned in the ministry report, the one that you highlight from Red Lake, wouldn't be covered under this bill.

In terms of the environmental penalties, we don't have a problem with polluter-pay. You have to clean up the spill, you have to mitigate the damage and you have to do it quickly. That's motherhood; we're in favour of that.

The Chair: Thank you very much for having come in this morning.

FRIENDS OF THE EARTH CANADA

The Chair: Friends of the Earth Canada, please.

Good morning and welcome. You have 15 minutes to address the committee. If you leave any time remaining, it will be divided among the parties for questions. Please begin by identifying yourself for Hansard, and the floor is yours.

Ms. Beatrice Olivastri: My name is Beatrice Olivastri of Friends of the Earth. Thank you, Mr. Chair and committee, for this opportunity to address you on what might be the most important piece of legislation to appear before committee in a long time. It may not be as time-sensitive as a budget, it might not get the same headlines as a new deal for cities, but I'd like to argue that it is equally or even more important over the long run for citizens of Ontario.

Again, my name is Beatrice Olivastri and I serve as the Chief Executive Officer of Friends of the Earth Canada, sometimes called FOE. Friends of the Earth has

grown from a small group of volunteers in 1978 to one of the country's most important voices speaking out on environmental issues. As the Canadian member of Friends of the Earth International—that's the world's largest grassroots environmental organization—we campaign in over 70 countries for a safe and healthy planet for people and other living beings.

We believe that a healthy environment is the basis for our economic and social well-being. Friends of the Earth endorses the precautionary principle and, significantly, in the context of our discussion today, the polluter-pays principle. As well, Friends of the Earth supports democratic processes and we are politically neutral.

Ladies and gentlemen, Bill 133 is crucial to the immediate and long-term health of virtually every citizen in Ontario. We have a spills problem in Ontario. Many of the industries appearing before you with the assistance of their slick, high-paid lobbyists will tell you that they have the problem under control. But the record in Ontario says otherwise. That's why we need Bill 133.

Bill 133's principle is straightforward and consistent with the principles we express at Friends of the Earth: you spill, you pay. While there are some aspects of the bill that we believe could be strengthened, and while we reserve judgment on the amendments proposed by Minister Dombrowsky until we have reviewed them, we support the principles of Bill 133 and urge that it be passed.

Let me outline briefly why it's clear that we have a spills problem in Ontario and why we think this bill will remedy it. First, it should be noted that spills are an increasingly common way for pollutants with unknown effects to make their way into the air we breathe and the water we drink. Many of these pollutants are linked with cancer and other serious diseases and ailments. Those of you who heard my colleague from Environmental Defence earlier this morning will have heard her comments on the cancer and disease aspects of these pollutants.

Bill 133 would cover only those industries governed by MISA as it stands now, 138 companies in nine industrial sectors. Ideally, legislation of this type would cover all industries in Ontario, but we recognize that a new way of addressing spills has to start somewhere, and the MISA industries are the logical place to start.

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In just one year—and you've heard this statistic already this morning—from 2003-04, spills by MISA facilities increased by nearly 13%. The number of closures of water intake plants across Ontario because of spills went up sixfold in that same year.

I take it that part of the argument of the slick lobbying campaign by industry is that Bill 133 is excessive. Perhaps, like me, you would think that number we heard earlier, 18 million litres, is an excessive number, and in that case it was exceeding what the company was permitted to pollute.

You know, in a way—and this might be the mind shift I would invite you to make this morning—we've already

institutionalized spills. We call them “emissions to air” and “discharges to water.” The same protesting companies already have permission to expose Ontario citizens to huge amounts of pollution under federal and provincial laws. The same protesting companies and their associations already expose Ontario citizens to, for example, using 2002 numbers, 1.2 million tonnes of pollution through emissions to air, water, land and underground. This is using the data just for Ontario companies in the material that Anne Mitchell gave you earlier this morning. Again, it’s federal data, but relevant only to Ontario operating companies that report under that. So bear in mind that that number—1.2 million tonnes—does not cover all pollution. Not all chemicals are reported under NPRI, and only pollution that’s on a large enough scale to trigger reporting. In most cases, the company would have to be in possession of about 10 tonnes of a given pollutant before they’d be reporting. So we’re still talking at a macro scale with 1.2 million tonnes of pollution. This is what I call “institutionalized spills”; quite legal. It’s part of our agreement of what can be done.

What we at Friends of the Earth like about Bill 133 is that it fills an important gap in Ontario’s suite of measures—I think there’s been some comment earlier this morning—for dealing with polluters. Could I remind you that just last year, Ontario announced its environmental leaders program, an attempt to provide aspiring companies—in one case an association—with a number of incentives to improve efficiency, long-range planning and flexibility. Our organization was one of three that worked with the ministry on the terms of reference for the leaders program. These factors—efficiency, long-range planning and flexibility—are all high on industries’ wish list. We heard a little bit about that just a moment ago. In that environmental leaders program, the Canadian Chemical Producers’ became the first sector-level participant, in September 2003. So one might expect aspiring leaders to see the value in addressing laggards, typically expressed by industry as providing a level playing field.

Friends of the Earth maintains that Bill 133 is an important way to level the playing field in Ontario by instituting environmental penalties, a concept in place, as you know, across the US and other provinces, but until now, not here. Environmental penalties, in our view, enable Ontarians to be swift of foot in taking action when spills occur. Rather than wait for a spill situation to churn through the courts while pollution continues, environmental penalties provide the mechanism for a community cleanup fund and quick action. Environmental penalties can be issued when a spill occurs. We think this does two things: It expedites cleanup and encourages industries that now spill far too often—those laggards I mentioned earlier—to think harder about how to avoid spills; in effect, pollution prevention.

The letter-writing campaign you’ve seen from industry is obviously in high gear, with dire warnings about how the sky will fall in Ontario if this spills law is strengthened. We’ve heard this song before; in fact, when MISA

itself was brought in. As you can imagine, our position is that Bill 133 is not tough enough. The existing situation is not tough enough, but the bill, as it stands, will go some way to correct that. I say “some way” because the bill could be even more comprehensive, in our view. We’d like to see provisions that make the system more accountable and transparent, and you have heard that several times this morning. For example, when an industry spills, pays the environmental penalty and reaches a settlement, we’d like it guaranteed that the communities downstream of the spill are involved in the negotiation of the settlement. We’d like to ensure that these details are reported to the public.

Also, we’d like to see the bill extended to include spills in other media, such as air. This should include a transparent and publicly accessible reporting system, one that would look at all the existing and new performance requirements, such as under certificates of approval.

We want to point out the extreme difficulty in obtaining information on the status of significant releases and spills in Ontario. This is, of course, a North American problem. In going forward and dealing with the reporting around this bill, we’d like each facility to be required to provide a global status report. In the interest of time, I’ll just mention that I think there are some interesting federal-provincial co-operative things that can be done in this respect.

Mr. Chair, ladies and gentlemen, there are details that can improve Bill 133. We think the minister and the government have gone far in listening to all sides of the debate about this bill, even to the extent of holding these hearings prior to second reading, just so everyone can provide input. We appreciate the opportunity to be heard with respect to this bill and urge that Bill 133 become the law in Ontario.

Just to provide a bit of background to the mind shift I was asking you to make about institutional spills, we’ve provided two charts that show you, in the province of Ontario, using the Ministry of the Environment district offices, what kind of releases you’re seeing as a matter of business. This would be in 2002. So the spills that would be addressed by this bill would be over and above the tonnes of pollutants that are shown in these charts.

Thank you very much for your attention.

The Chair: Thank you. If we can squeeze a question and an answer within about a minute, we should be able to do one in each caucus, beginning with Mr. Bisson.

Mr. Bisson: I come out of mining. Just so you know, I worked underground as an electrician and as a millwright’s apprentice for a number of years. We were losing people both to injury and to death, by both disease and accidents, for many, many years in mining. We took the approach of fines. We said, “Let’s have a coroner’s inquest every time somebody dies, and if not, let’s file a compensation claim in order to fine the company for the damage done either by way of accident or by way of death by disease.”

We finally came to the conclusion, as Steelworkers, that that was ineffective, that in fact what we needed to

do was prevent the accident before it happened. So we lobbied at the time of the Conservative government and got the Occupational Health and Safety Act, which puts all of the emphasis, 99% of the act, on prevention.

You look at the stats today in mining, and it's one of the safest industries to work in for the type of heavy industrial work that we do. It's one of the safest places and certainly compares light years ahead of what it was even 20, 25 years ago.

So my question is, by putting more fines, at the end of the day, do we really get what we want, or should we be putting more of our emphasis on prevention?

Ms. Olivastri: Actually, we're in agreement. What I said and what I would suggest would be the case for a lot of people is that there is a focus on leadership, there is a focus on—and I didn't mention this—compliance and assurance, which is, in the ministry's office of transformation now, a renewal around certificates of approval, pollution prevention, this kind of thing.

The Chair: Mr. Wilkinson.

Mr. Wilkinson: Thank you for coming in, Beatrice. Two things. Just a point of clarification: You had a question about air emissions and this being restricted to spills, to water. Just so you and your members are clear, actually, air emissions in exceedance of a certificate of approval will be subject to this bill. So I'm sure you'll be happy to hear that.

Ms. Olivastri: I'll be very happy to hear that.

Mr. Wilkinson: The second thing: Just with your experience, if you could be brief, you were talking about the fact, when MISA came in, of a very strong lobby against the government: "Oh, no, we can't do this. Business will stop. Everyone will leave Ontario." You actually have, I believe, some experience in that battle at that time. I was wondering if you could just kind of share that with some of us who are new to this file.

Ms. Olivastri: I think we've got a couple of generations, actually, of experience that show that companies that do step up to be leaders begin to see this as a competitive factor in their favour.

Mr. Wilkinson: Great. Thank you.

The Chair: Mr. Barrett.

Mr. Barrett: Thank you, Ms. Olivastri. Dr. Heathcote produced the IPAT report at the request of this government. You made mention of the environmental leaders' program and moving toward incentives. One of the recommendations of the IPAT report was that there be a legislative framework that incorporates both sticks and carrots—i.e. incentives like grants, low-rate loans, accelerated depreciation programs—to try to improve plants and equipment in some of these either problem or non-problem companies. There's nothing in the bill about this. Do you know of anyone that's putting forward any amendments to—

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Ms. Olivastri: I understand—because I have met with an official in the ministry in an office, as I mentioned, called the office of transformation—that they are in fact

working toward this kind of program under the compliance and assurance—

Mr. Barrett: That would have to be another piece of legislation, then?

Ms. Olivastri: I don't actually know if it'll take another piece of legislation or simply a retooling of existing work, but we're very much in support of this effort. As I say, I think that's part of the core business of dealing with certificates of approval as they now stand and perhaps being more effective in updating them, supporting them and then enforcing them.

Mr. Barrett: Just a head's up: No amendments have been mentioned to date.

The Chair: Thank you very much for coming in today and for delivering your deputation.

CHATHAM-KENT PUBLIC HEALTH UNIT

The Chair: The municipality of Chatham-Kent public health unit.

Just to give you a quick summary again of the ground rules, you have 15 minutes before us today. If you leave any time remaining, it'll be divided among the parties for questions. Please begin by stating your name for Hansard.

Dr. David Colby: Thank you, Mr. Chair and members of the committee. I'm Dr. David Colby. I'm the acting medical officer of health of the municipality of Chatham-Kent. I'm here representing the board of health, the health unit and actually the people of Chatham-Kent. I'm a fellow of the Royal College of Physicians and Surgeons of Canada, I'm a coroner appointed to the province of Ontario and I'm also a member of the OMA, which, until earlier this morning, I thought referred to the Ontario Medical Association, not the Ontario Mining Association. Nevertheless, as the medical officer of health, it's my personal responsibility to take action when spills occur in my jurisdiction. I'm on call 24 hours a day, seven days a week, including right at this moment.

I'm very appreciative to be able to speak to this bill. We believe that this legislation is essential to improving the health and safety of our communities by providing a disincentive to acts of pollution.

I'd like to tell you a little bit about my municipality. Chatham-Kent is an amalgamated municipality consisting of both rural and urban centres. We're located in southwestern Ontario, with Lake Erie directly to our south and the St. Clair River and Lake St. Clair directly to our west. The town of Wallaceburg is located in the northwest corner. Wallaceburg receives its municipal water supply directly from the St. Clair River. This community has been severely impacted on numerous occasions by spills from petrochemical companies located upstream to the north in Sarnia's chemical valley. I have provided in my deposition a map for the convenience of the committee members. The industry in Sarnia's chemical valley includes many of the largest petrochemical companies in Canada. Many of these companies use volumes of water from the St. Clair River in their pro-

duction and cooling processes and are situated directly adjacent to the river.

As long as current practices continue, there will be more spills. I've heard it asserted today that the process is working with regard to that. Well, I have no evidence of that, as the one who has to deal with it. I don't think this process is working at all. There have been literally hundreds, if not thousands, of chemical spills into the St. Clair River. Quite possibly, many of these spills were never reported in the early days of industrial development in what we now call the chemical valley, but residents of the area still have clear memories of the infamous chemical blob in the St. Clair River that resulted from the cumulative load of a great number of spills, some of which probably in themselves would have been judged as individually insignificant. I in fact treated some of the blob divers when I was an emergency physician in the mid-1980s.

I have provided a list of events we have on record since 1985, comprising 19 separate spills. Every one of these required decisions about closing and reopening water intakes. With prolonged closure, the committee members should realize that we are dealing with potential loss of fire protection to the community because of a drop in water levels in the reservoirs. Some of these spills required the provision of bottled water to our citizens, at tremendous expense.

If you look at some of the chemicals that have been spilled, they make the list of the most toxic chemicals known to humankind: dioxin, furan, benzene, vinyl chloride—all of which we've heard earlier this morning have well-established reputations as being cancer-causing toxins that have the ability to be absorbed into the human body.

The impact of spills in Chatham-Kent and the community of Wallaceburg is tremendous. When there is an industrial spills crisis, it affects thousands of citizens, but especially the communities of Wallaceburg and the Walpole Island First Nation.

Thousands of people receive their drinking water from a water source that has been contaminated on many occasions over the past few years, as I've outlined. Not only does the Wallaceburg water treatment plant obtain its water from the St. Clair River, but there are a number of private users—I mentioned the Walpole Island First Nation. We need to provide safe drinking water and protection of that water to ensure that human health and community well-being is protected. That's my job.

The Chatham-Kent public health unit is very happy that the Ontario government has stated its intention to introduce watershed-based drinking water source protection legislation in spring 2005. We believe that strong legislation, through Bill 133, will complement the government's efforts in protecting the drinking water in Ontario.

This is the time for consistency in the province's approach to the provision of safe drinking water. We all know the impact that the news about a little town called Walkerton had on all of us.

Nearly one year after the Royal Polymers vinyl chloride spill into the St. Clair River, the Ontario government assembled the Industrial Pollution Action Team, the IPAT team, to put together a comprehensive report on recommendations for spills prevention based on the findings in that spill, which generated an unprecedented amount of local anger.

Two months after filing the report, the Honourable Minister of the Environment introduced Bill 133, the Environmental Enforcement Statute Law Amendment Act, which, while very positive, does not incorporate many of the monitoring and prevention recommendations that are integral to the IPAT report. I've heard a lot of criticism this morning of this bill on that basis. That's not what it's designed to do. It shouldn't be considered inadequate because of that. It's designed to provide a disincentive to allowing spills and to make companies clean up and try to prevent the possibility of encouraging large fines. Virtually all of the laws we have, aside from standards legislation, as I understand it—I'm not a lawyer; I'm a doctor—in Ontario are based on penalizing people who break the law. This is nothing unusual, I don't think.

During the period since that infamous spill, we've had numerous spills in Chatham-Kent that have created a level of anxiety and mistrust that is really getting unmanageable, especially in the community of Wallaceburg.

The Imperial Oil spill of methyl ethyl ketone and methyl isobutyl ketone on February 1, 2004, had such a major impact in Chatham-Kent and southwestern Ontario that the water treatment facilities of Stag Island, Walpole Island, Wallaceburg, Tilbury, Stoney Point, Belle River, and Tecumseh and Windsor were all affected and all had to deal with this. Significant human and technical resources were dedicated to this event alone for over one month at the Chatham-Kent public health unit, in addition to the work done by the local public utilities commission, the community administrations, the Ministry of the Environment and many others. We've got other things we have to do too. We can't just devote all our energy to that.

1030

We feel there's no choice but to enhance and bring forward proactive legislation that puts more responsibility and more disincentive on polluters. This spills problem has persisted for years, and it's time to take decisive action. Bill 133, although it does have limitations, is a very positive step in this direction. We need to do this. In Chatham-Kent, and especially in Wallaceburg, the provincial government is in danger of losing credibility. As long as spills continue, it's perceived as inaction, to them, on the part of the government. We don't need more of that.

Grassroots community groups have sprung up. The Wallaceburg Advisory Team for a Cleaner Habitat, WATCH, has formed looking for answers. They're angry, they're resourceful, they're smart and they're motivated to make improvements. Who can blame them? It's their water that gets shut off all the time. We're told

that we can't use it for a while because it's unsafe. Doubt and concern are an international issue; they span both sides of the river. Both Michigan and Ontario communities have mobilized to seek solutions, such as a real-time monitoring station in the St. Clair River that would provide warning of unannounced spills.

This situation is not going to go away any time soon. The confidence of affected communities needs to be earned, and Bill 133 is only part of that solution. We need to recognize that active enforcement must be done, whether through the ministry's environmental SWAT team or through another mechanism. Self-regulation by petrochemical companies is clearly not an option here. Some companies are very good corporate citizens; it's not my intention to paint the petrochemical industry as villains in this regard. But if you look at it from their point of view, who wouldn't argue against heavier fines that have an economic impact on their company? They'd be crazy if they didn't argue against that. But we need those fines. It's not going to affect the majority of companies that are good corporate citizens. It's only going to affect the bad actors in this whole situation. I think we've heard the term "levelling the playing field" several times. I can only support that opinion.

Change cannot happen without a comprehensive framework for action that's progressive and based on sound prevention policies. This bill does not comprehensively affect those, but it does some good and it needs our support.

The government needs to heed its own advice. The Honourable Leona Dombrowsky, in her speech on October 27, 2004, said, among other things, "We are making excellent progress in developing safeguards to protect drinking water from source to tap.... We have introduced regulations to make Ontario's hazardous waste rules the toughest in North America. We have created the environmental leaders program to reward and recognize the top environmental performers among Ontario companies.

"We know that the vast majority of companies in this province are responsible corporate citizens. It is only fair to them that we target companies that fail to live up to their environmental responsibilities. In the past, some have turned a blind eye to pollution, calling it a part of the cost of doing business in Ontario." We've heard a little bit about that this morning, but that's unacceptable. "It is not fair to our responsible businesses and it is not fair to the people of Ontario."

She said, "This government will not tolerate companies and individuals who put our environment and the health of Ontarians at risk."

We can't turn a blind eye to what's been happening. Spills are continuing. They're not the cost of doing business. We can't tolerate anything less than zero spills into drinking water in Wallaceburg, Chatham-Kent or any place in Ontario.

As a medical officer of health, my mandate extends to the health of the community of Chatham-Kent first, fore-

most and primarily, but the first degree I received was in biology. The fresh waters of the Great Lakes—

The Chair: Just to remind you, you have about one minute.

Dr. Colby: I will finish on time, sir. The fresh waters of the Great Lakes are a valuable resource and a national treasure, but are also home to myriad wild creatures that share our own fragile planet. They are part of our own ecosystem and they are under our domain. Our rivers and lakes are not toxic waste dumps. There must be strong disincentives to pollution, and Bill 133 is part of that solution.

Thank you very much.

The Chair: Thank you very much for having come in this morning. That concludes the time that we have available to you.

CANADIAN MANUFACTURERS AND EXPORTERS

The Chair: I'd now like to ask the Canadian Manufacturers and Exporters to come up.

Thank you for having come in this morning. You have 15 minutes for your deputation. Please begin by stating your names clearly for the purposes of Hansard, and the floor is yours.

Mr. Ian Howcroft: Good morning. Thank you very much. We're very pleased to be here. My name is Ian Howcroft, and I'm vice-president of the Ontario division of Canadian Manufacturers and Exporters. With me are Nancy Coulas, CME's director of environmental policy, and Lisa Kozma, who is chair of our Bill 133 ad hoc committee, chair of our occupational health and safety committee and a member of the Ontario division board of directors.

Canadian Manufacturers and Exporters is Canada's largest trade and industry association. Its mandate is to promote the competitiveness of Canadian manufacturers and enable the success of Canadian goods and services exporters in markets around the world. We're currently involved in a major initiative, entitled Manufacturing 2020. It's what we have to do now to ensure that we in Ontario and Canada have a vibrant manufacturing sector in the year 2020.

CME's membership is drawn from all sectors of Canada's manufacturing and exporting community and from all provinces across the country. The association represents Canada's leading global enterprises, and more than 85% of CME's members are small and medium-sized enterprises. Together, CME's membership accounts for approximately 75% of the country's total manufacturing production and is responsible for approximately 90% of the country's exports. Ontario accounts for about 51% of the total manufacturing output in Canada.

CME members are responsible corporate citizens that contribute to the well-being of the communities in which they are located and in which they operate. CME is committed to the principle that if you pollute, you should pay the costs of response and restoration of the environ-

ment. CME members respect and comply with the laws of Ontario and of Canada, and as employers, workers and residents of the communities in which they are located, strongly support good environmental stewardship

Bill 133 was introduced with very little consultation and, perhaps in part as a result, raises a number of very serious concerns.

The legislation as drafted applies to everyone, with the environmental penalty provisions applying to persons engaged in business activities described in the regulations and persons holding an environmental approval and their directors, officers, employees and agents. It has been said that the intent is to apply to MISA-regulated companies. If this is the intent, it would be more appropriate to amend the regulations currently governing MISA-regulated companies. The legislation as drafted should be clearly consistent with the intended scope and intent.

The legislation as worded ignores long-established principles of good governance and denies citizens the type of fair treatment they have a right to expect in a democracy.

The bill as currently worded may have the inadvertent consequences of (1) encouraging companies to move jobs and investment from Ontario into other jurisdictions where there is greater certainty as to the legislative requirements, and (2) undermining the effective working relationship between regulators and industry and encouraging industry to focus more on protecting themselves from legal liability than on good environmental stewardship practices.

CME members will continue to be good corporate citizens. However, the current drafting of Bill 133 is so unclear in terms of the requirements that it will be extremely difficult for any company, even with the best of intentions, to be sure it is in compliance. Without major improvements, this law will therefore be a major barrier to attracting new investment for manufacturing in Ontario and will negatively impact fragile existing investment. For these reasons, the committee must support amendments to Bill 133 to promote certainty, fairness and robust compliance with Ontario's environmental laws that address the following concerns.

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Director and officer provisions: The potential scope of liability for directors and officers is greatly expanded under Bill 133. Activities such as burning logs in a fire-place or operating in accordance with the terms of an approval may be out of compliance and unfair in that quasi-criminal proceedings should not be taken against an organization or individuals where there "may" be an environmental impact. Quasi-criminal proceedings are very serious proceedings for both individuals and organizations, and should not be used unless there is at least the likelihood of an adverse environmental impact. Environmental legislation that abandons the use of science and measurement and instead proposes to substitute subjective judgments creates a regulatory regime with an unreasonable level of uncertainty and unpredictability as to what is and what is not an offence.

As applied to spill and emissions reporting, the reduced threshold will significantly increase the number of reportable incidents by including incidents that may or may not have an adverse environmental impact, an unnecessary burden on industry and the government. Both industry and government resources should be clearly focused on spills that have or are likely to have an adverse environmental impact. This issue cannot be fixed in regulations and therefore must be dealt with by this committee as an amendment to Bill 133.

I'd like to now turn to Nancy Coulas to continue with environmental penalties.

Ms. Nancy Coulas: Environmental penalties give the Ministry of the Environment the authority to directly and quickly impose penalties on violators. While CME supports rapid and effective environmental enforcement, CME has several concerns with respect to the environmental penalties section of Bill 133 and believes that the committee should support amendments to the bill's environmental penalties provisions. CME's concerns include the following:

The intent with respect to the scope and implementation of environmental penalties is not clear from the legislation. CME believes that the government should use regulation only in instances that have been clearly envisaged by the Legislature and that these regulations should be drafted and seen by the public prior to the passage of Bill 133. To create certainty and facilitate robust compliance, the scope needs to be clarified to be specific to spills into water which "cause or are likely to cause" an adverse effect.

CME is adamantly opposed to the requirement that environmental penalties be absolute liability offences. The Supreme Court of Canada in *Regina v. Sault Ste. Marie* established "strict liability" offences on the basis that "If a person is already taking every reasonable precautionary measure, is he likely to take additional measures, knowing that however much care he takes, it will not serve as a defence in the event of a breach?"

The defence of due diligence rewards and encourages companies to put in place responsible environmental practices. The proposal to eliminate due diligence as a defence is based on American law, which is far more prescriptive than Canadian law in its nature and ignores the Canadian legal heritage of cases such as the *Sault Ste. Marie* case. Due diligence as a defence is well established in case law in all Canadian jurisdictions, including Ontario. There would not appear to be any evidence that the American way is the more effective way.

As written in Bill 133, an MOE officer—i.e., field staff—has the power to issue an environmental penalty. To ensure that significant penalties such as penalties to corporations of \$100,000 per day are imposed after appropriate review for consistency and to maintain effective working relationships with local abatement officers—I believe that in the minister's remarks on May 12 she indicated there might be an amendment to this. We would support that kind of amendment, where the penalty

would be issued by at least a director-level, or higher, MOE staff.

Environmental penalties should not be levied on employees, officers, contractors or agents of a company, but only on the company itself. Placing a penalty on an employee would be extremely punitive, as there are extremely limited appeal rights for such penalties to a court, potentially violating the fundamental rights of due process enjoyed by all Ontarians. These penalties may only be appealed to a court with respect to questions of law. Further, this would have a significant impact on the ability to hire engineers and environmental managers in Ontario. Environmental engineers will not wish to accept work under conditions where they risk having a fine imposed that could destroy their families' finances. CME would support making an amendment to the bill that would ensure that company officials or employees would not be subject to environmental penalties. Again, I believe the minister made some comments with respect to that issue as well. CME supports a cap on the maximum environmental penalties payable by companies, and there should not be environmental penalties for individuals.

Where the offence is more serious, prosecution is the appropriate enforcement tool, not an environmental penalty. In addition, there should be a one-year limitation period for the application of penalties.

CME supports sustainable, effective environmental laws and effective enforcement of those laws. CME supports the creation of a community clean-up fund, provided that the funds are used specifically to deal with community spill response and cleanup costs. The administrative costs for the fund need to be minimized, funds must be delivered in a timely fashion, and the scope of the fund—how it is spent—must be clearly outlined. With respect to cost recovery orders, more detail is required as to who would get compensation. We need to ensure that liability is not unlimited and that MOE cannot charge a company under both cost recovery orders and environmental penalties. CME recommends that the regulation that appears to be intended to govern what is compensable be released for public comment prior to the passage of Bill 133.

In the time available, we have only been able to touch upon a few key concerns with respect to the bill as it's currently worded. There are many other improvements that must also be made to this bill if it is to proceed, and we urge the committee to ensure that the bill is amended in ways that will make it both more effective and fair. We have heard remarks made by the Minister of the Environment on May 12 that she intends to table amendments to Bill 133 prior to second reading. We urge the government of Ontario to table these amendments immediately for public consideration prior to this committee completing its work on Bill 133.

All Ontarians, both as individuals and as members of organizations, have a responsibility to preserve and enhance Ontario's environment for future generations. Ontario's manufacturers pledge ourselves to working

with all partners, including government, to encourage good stewardship of our air, lands and water. In turn, we ask this committee and the Legislature of Ontario to ensure that Bill 133 reflects the respect for basic rights and sound public policy that every Ontarian has a right to expect of our government.

We are pleased to have this opportunity to provide our input to the committee, and hope that our input will be reflected in timely amendments to the legislation.

The Chair: Thank you very much. We have about a minute for each caucus for a succinct question and answer, beginning with Mr. Wilkinson.

Mr. Wilkinson: Thanks for coming in today. We have been consulting broadly, as you know, for about the last eight months since the bill was introduced, and that's why we're in this process right now, before the bill goes back for second reading and approval in principle.

I just want to put on the record that you have brought up the Sault Ste. Marie case. We've done some review of course on the constitutionality of this. Remember that environmental penalties are civil administrative penalties; they're not criminal prosecutions. It's something that's applied in other jurisdictions, including in Canada, and I think the Supreme Court has been very clear, specifically in the Transport Robert case, about the fact that government and the Legislature have the power to impose fines, and when there's no threat of imprisonment, those fines are in the public interest. For example, in this province, if a wheel comes off of your truck, there is no defence of due diligence; the wheel came off your truck, and therefore there's a fine. Environmental penalties further that whole principle in law. So we have to make sure we're clear between the question of criminal prosecutions—which the ministry of course reserves; we have those powers—and ones of civil penalties.

Ms. Lisa Kozma: Yes, we're very aware of the Ontario Court of Appeal case that you discuss. What we're really talking about here is more a matter of principle. Yes, we understand that based on that case, government may have the authority to create absolute liability offences. The question is, however, more fundamental: It's whether the government should, and that's what was raised.

Mr. Barrett: I thank the Canadian Manufacturers and Exporters for coming forward, and I also wish to thank you for your brief. Each deputation has presented us with a brief; however, we did not receive a written brief, to my knowledge, when the minister came before this committee. So we are operating in a period of uncertainty right now. You've indicated a number of times that you believe the minister said this or said that; you use the word "might" introduce an amendment. Regrettably, we're operating in a vacuum here; I concur with you. Clause-by-clause will be this Thursday. We understand this bill is going to look different than originally planned, but we've been given no direction, and it has hampered this committee considerably. Do you have any comments on that?

1050

Mr. Howcroft: No, we just hoped that we would get some additional information. I think there's a lot of apprehension and need for clarification on that. I think that's why this committee's work is extremely important, to make sure that it reviews the information put forward through the deputations, and that it makes the recommendations necessary so that we get that information and we have good, sound environmental policy and regulations in place.

The Chair: Just as a point of clarification, the minister's opening statement was distributed today.

Mr. Barrett: The opening statement?

The Chair: Yes.

Mr. Barrett: Would that include the amendments? I haven't had a chance to read it.

Interjection.

Mr. Barrett: Her comments?

Mr. Wilkinson: A copy of what she said as well.

Mr. Barrett: Yes, we know it's in Hansard. Further to that—I guess I'll use my time as a point of order, Chair.

The Chair: You have about 30 seconds.

Mr. Barrett: Thirty seconds for a point of order? Again, it comes right from yet another well-written brief: "We urge the government of Ontario to table these amendments immediately." Yet they're not in Hansard. I heard the minister.

Interjection.

Mr. Barrett: I have 30 seconds; just a moment.

I'll make this as a motion, and I take it right from this brief: "We urge the government of Ontario to table these amendments immediately for public consideration prior this committee completing its work on Bill 133." We know clause-by-clause is this Thursday. We may get them Wednesday night. I don't feel that's fair to people who are making deliberations here. We've heard so much today on the importance of prevention. There's nothing in this legislation that addresses prevention. We just had a presentation from a medical officer of health. I have seen no amendments with respect to—

The Chair: Can you sum up?

Mr. Barrett: That flies in the face of the government's own IPAT committee, which focused on prevention and incentives to try to ameliorate some of these problems before they get worse. That's my motion, Chair. If there is any discussion—

Mr. Wilkinson: Mr. Chair, there is a difference between a point of order and a motion. But I find it odd that we were here on Thursday and I read into the record, with all-party support, the subcommittee report that all three parties agreed to. Perhaps my friend from Haldimand-Norfolk-Brant may want to check with Hansard about what happened just last week. Point number 11 clearly states "that proposed amendments to be moved during clause-by-clause consideration of the bill should be filed with the clerk of the committee by 5:00 p.m. on Tuesday, May 17, 2005."

We agreed to that process, so in the middle of this to say, "Well, now we should have a different process"—

you would have raised that, then, before we all agreed to the deadline for submission of amendments.

Mr. Barrett: With this bill there have been, obviously, horses changing in mid-stream. What was presented to the Ontario Legislature last fall is probably going to be considerably different by Thursday. We've had so many delegations, companies that can't operate in a climate of uncertainty. This committee cannot operate in a climate of uncertainty.

The Chair: As you've proposed nothing that supersedes the sub-committee report, then I have to rule that out of order.

Mr. Barrett: My motion has been presented in writing to the clerk.

The Chair: Could you read your motion?

Mr. Barrett: Yes. I so move, "We urge the government of Ontario to table these amendments immediately for public consideration prior this committee completing its work on Bill 133."

The Chair: All those in favour? All those opposed? I declare the motion lost.

Thank you very much for your deputation this morning.

ROBERT GARTHSON

The Chair: Mr. Robert Garthson.

Mr. Garthson, you have 10 minutes to make your deputation before us this morning. If you leave any time remaining, it will be divided among the parties for questions. Please sit down, make yourself comfortable, state your name clearly for the purposes of Hansard and proceed.

Mr. Robert Garthson: My name is Robert Garthson. I did send a letter to this committee earlier. I don't know whether that letter has been copied and made available, in which case I won't repeat it.

I realize that I don't have a great amount of time and I certainly don't assume that I can educate members of this committee, who I'm sure have spent many times—as indicated in the letter, I strongly support the intention of the legislation. I believe all of us will benefit from having certainty on issues that affect our health and the quality of our life.

Many years ago in Sunday school, a man told me that average people should have the courage to act and speak on the things they believe in, and the determination and sense of responsibility to communicate those concerns. Many years later, when we shared a board of directors for St. Leonard's House, that same man said it was important to have compassion for those people who need our support and help. That man was former Premier Bill Davis, a long-time friend of the family and someone who certainly encouraged me to be involved in education and civic affairs.

I believe it is the government's primary responsibility to promote quality of life and to protect its citizens. There should be equity in terms of treatment and expectations of consequences. The old excuses that justified exploit-

ation and pollution without penalty have no place in our world.

Water is a very special resource. There has been no new water on the planet since the planet was created. We are all very much interrelated and interconnected and, as I indicated in my letter, I would hope that since this government has introduced many initiatives, they would look at those issues in total, whether it's biodiversity, environmental protection, water quality—whatever specific aspect—and take responsibility for those decisions. They should not privatize or download that responsibility on to levels of government that cannot afford it or do not have the expertise to handle it. In fact, in a Supreme Court decision involving BC Hydro, it was very clear that if someone had responsibility for an action that harmed the environment, that responsibility existed forever, not just at someone's convenience. I believe that is a very important consideration.

1100

As I indicated in my letter, I suffer from environmental illness. I have heavy metal mercury poisoning. It's had a major impact on my life. I'm not going to go into that story, but I've used that experience to learn from it. I'm an organic farmer. I practise permaculture, biodynamics and organics in everything I do in Shelter Valley, Northumberland. I moved to that location because of its clean air and water, and land that I could grow on that wasn't polluted by chemicals, only to find that we may be faced with an aggregate pit in the middle of our territory, in the middle of Shelter Valley, that has been classified previously by the Ministry of the Environment and others as a very toxic waste site, a dump site.

All of these things are connected. It will affect our water, our air and our quality of life. We hope the government will take responsibility for that and that everyone will support it.

In my master's work many years ago, I focused on our relationship with aboriginal peoples. There was an expression in the oral history of aboriginal peoples that said, "Before an action is taken that might cause harm to people or the environment, consideration should be given to the seven generations of children yet to be born." I think we could all learn from that. I hope we will do so.

I think the bill has come about partly because the concept of voluntary compliance was very popular at one time. I think the evidence is very clear that voluntary compliance in most cases means non-compliance. In fact, if we need to address the issue by having community education, if we need to look at budget priorities, if we need to reconsider things like tax cuts that may have jeopardized some of these issues, then those are the things that I would ask you to have the courage to do; that you would not simply follow what may be the easy course of taking advice or following direction from those who have something to gain from not putting this important legislation in place.

I have no profound statements to make, but I do believe you have a very important responsibility here, and my children, my children's children, all of our children and all life, both in Ontario and around us, will be impacted very much by the decisions you make. Despite popular myth, we know that in many cases pollution is increasing, both here and around the world, and we have to address that. I know the ministry has put out a number of directives on that. Ontario Nature has suggested that we need to extend the concept of the greenbelt—

The Chair: Just to advise you, you have about two minutes left.

Mr. Garthson: —to a greenway that would cover all of southern Ontario. I would invite you to come to Shelter Valley, to see what that might do for the quality of life of people in Ontario in our very small community.

With those comments, I thank you for being given the opportunity to speak today.

The Chair: We should have time for just one question, and that would be from Mr. Miller.

Mr. Miller: Thanks for your presentation today. The last group that presented said in part of their statement that one of the inadvertent consequences of Bill 133 is that it could actually undermine the relationship between business and the Ministry of the Environment in terms of trying to work toward spills prevention and programs to prevent pollution, because the focus would be more on preventing legal liability than on actual pollution prevention. In fact, the government's own Industrial Pollution Action Team report recommends that the ministry pursue the development of regulatory requirements for pollution prevention. Do you have any comments about that? This bill focuses on environmental penalties versus trying to develop programs to actually stop the pollution.

Mr. Garthson: Obviously, certain pieces of legislation may have a particular focus, and it's really up to the Legislature how broad they are. As I indicated earlier, I think the importance is that there needs to be an integrated approach that would include, if necessary, under separate legislation, clear guidelines for prevention. I think it is important to work together with all of the partners who could be involved in this process. But the reality is that we have a serious problem on our hands in Ontario and we have to address that problem.

I would hope that the Legislature would look at very comprehensive follow-up to this legislation that would cover whatever gaps, whatever issues arise. It's not something that's going to solve all the problems, but we know there are many stakeholders who are informally involved who don't have the opportunity to speak out and, as a former educator, I think there has to be much more public engagement in that. I did represent the Canadian educators on the world committee on technical education, and some of those questions were very obvious in that discussion as well.

The Chair: Mr. Garthson, thank you for coming in today.

BP CANADA ENERGY CO.

The Chair: BP Canada Energy Co.

Good morning to you. You have 15 minutes for your deputation before us today. Please begin by identifying yourself for the purposes of Hansard and continue.

Mr. Randy Jones: Good morning. My name is Randy Jones and I work for BP Canada Energy Co.

Mr. Chairman, members of the standing committee, first of all I'd like to thank you for allowing me this opportunity to come before you this morning and discuss what I consider to be a very important issue.

BP Canada Energy Co. is a wholly owned subsidiary of BP plc, the world's second-largest energy company. We've been active in Canada since 1948, and we currently employ about 1,500 Canadians, including about 200 people in the province of Ontario.

BP is Canada's leading natural gas value chain company. We explore for, develop, produce, process, market and trade natural gas and its derivatives. We are also leading oil and aviation product marketers, and are Canada's leading lubricants brand.

Here in Ontario, we have several operations, including a Castrol facility in Mississauga, Air BP Canada operations at Pearson International Airport and major natural gas liquids facilities in Sarnia and Windsor. I'm the area manager for BP for the natural gas liquids operations here in Ontario.

At BP, we are focused on meeting the world's needs for energy while preserving the environment and working for the communities that we call home. We are committed to the proactive and responsible treatment of the planet's natural resources and to the development of sources of lower carbon energy. Furthermore, we are proud of our record on the environment and we're committed to continuous improvement in the environment.

For example, in 1998, BP announced that we would reduce our greenhouse gas emissions to 10% below 1990 levels before 2010. We reached that target in 2002, eight years ahead of schedule. In addition, all of our major operations around the world, including Canada, are ISO 14001 certified. ISO 14001 is the international standard for environmental management plans. It is in this spirit that BP offers comments on Bill 133.

BP Canada has major concerns concerning the bill. I won't go into them in depth because I'm sure many have come before me mentioning some of the same things.

The bill makes no allowance for efforts by operators to exercise due diligence. The bill makes companies subject to penalties, even when companies are in compliance with existing permits. The bill makes companies subject to penalties even in cases where releases are not likely to have had an adverse impact. The fact is that environmental penalties raise an issue of double jeopardy, and then of course there's the reverse onus of proof.

We are encouraged that the Ministry of the Environment appears to be listening. While the amendments the minister has proposed do not address all of our concerns with Bill 133, we are pleased that the minister has

indicated a willingness to work with industry to improve this bill. We are hopeful that these public hearings will lead to even more improvements and will result in a bill that industry can support wholeheartedly.

Rather than reiterating major concerns that are consistent with those of other stakeholders and that have been clearly stated to the ministry and this committee, we'd like to focus on how we can achieve the government of Ontario's goal of preventing all spills to the environment. I can tell you that BP's goal, as well as any other operator's, should be zero spills. I would also like to add that the province of Ontario has an opportunity with this bill to take a leadership position across Canada. A very important time in a very important decision-making process is underway.

Bill 133, with its emphasis on penalties, is reactive. Instead of focusing on preventing spills, it focuses on how to punish companies after a spill has occurred. While I, and BP, believe in the polluter-pay principle, we also believe that we should examine how best to prevent environmental harm from occurring, rather than remediating environmental harm that should have been prevented in the first place.

BP thus recommends that Bill 133 incorporate a comprehensive, risk-based approach for classifying, preventing and managing spills in Ontario, including unambiguous definitions of spills both to the air and to the water. This was a recommendation of Ontario's Industrial Pollution Action Team, or IPAT, which was reported on July 30, 2004. BP encourages the government of Ontario to make spill prevention plans mandatory for all operators.

Spill prevention plans, as mandated, for example, in the United States, require an assessment of the potential spill risk and the mitigation of such risks. Risk is assessed based on hazard, quantity and release potential of materials present on any given site. Preventive measures can then be implemented to address the specific risks and potential to all possible spill sources across the province, regardless of the industrial sector. A tiered approach to regulatory spill prevention can be valuable in focusing efforts and resources where the greatest spill risks exist. BP has extensive background in risk-based prevention programs and planning, as required under the US federal code. These resources are available if you wish to explore even further the knowledge base that we have.

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Some of the things that happen under US regulations: The potential to pollute is looked at across all industry segments. This leads to levels of preplanning very specific to the individual risk and includes potential impacts that are preplanned before any event occurs. It leads to inspections, depending upon risk. It also leads to realistic spill drill scenarios, because the best plan in the world isn't that good unless you practise what's in the plan. It also includes things like financial preparation to ensure that you can pay if you have a higher risk and also includes public disclosure.

A clear definition of what constitutes a spill would assist the government, industry and communities in prevention planning and communication. By determining spill reporting thresholds for compounds or groups of compounds, the responsibility of both the regulated community and the government becomes explicable and transparent. Furthermore, the public can better understand where risk does and does not exist. Again, this process must be reliant on comprehensive risk assessment as identified by IPAT and in much the same way the Ministry of the Environment sets air standards.

A good example in the US was when, once promulgated, ethylene glycol originally had a threshold reporting quantity of one pound. As additional scientific and health data became available, that threshold was raised to 10,000 pounds—again, based on the risk of that particular component.

Bill 133, as currently drafted, makes no distinction between companies that have good environmental performance and those that do not. BP believes that sound enforcement requires that there be a differentiation principle in effect. BP thus recommends that the government create a tiered enforcement program based on dischargers' spills and general compliance records. Again, this was a recommendation of IPAT.

It is our understanding from our discussions that Bill 133 would only apply to companies currently subject to the water-based municipal-industrial strategy for abatement, or MISA, regulations. BP believes it is unfair to impose environmental legislation on only a select group of companies by excluding those facilities that still have potential for harmful spills to air. This does not create a level playing field for all operators, nor does it further the overall goal of preventing harmful emissions from all industrial sources. BP thus recommends that an amended Bill 133 be applied to all industries in Ontario that have the potential to emit to either air or water or both.

Finally, I've mentioned the IPAT report several times in my remarks. While BP does not agree with all of the recommendations that IPAT made, we do see that the IPAT report recommendations are a good starting point for discussions on how to improve this bill. For example, IPAT recommends that the road to eliminating spills should include new incentives; improved communication; in-depth analysis of the technological, regulatory and behavioural factors that underlie spills; and a substantive public dialogue about the prevention and elimination of spill events in the St. Clair River and elsewhere in the province. Such an approach suggests that IPAT believes more in the carrot than in the stick.

BP is not asking for a licence to pollute, nor are we asking to shirk the responsibility that we would assume if a spill event occurs.

I would like to thank you this morning for the opportunity to share some insights from BP and myself on Bill 133. I hope I have provided you with some different insights than perhaps you have heard before and that I have conveyed to you that I, as well as BP, feel that all

spills are preventable, all spills are reprehensible, and therefore prevention is the key to good performance.

Furthermore, and lastly, sound environmental legislation leads to sound environmental performance.

The Chair: We have about a minute each for the caucuses to ask questions, beginning with Mr. Marchese.

Mr. Rosario Marchese (Trinity-Spadina): Can I ask you, does spills prevention also include pollution prevention?

Mr. Jones: Oh, certainly.

Mr. Marchese: You must be familiar with the Massachusetts experience. In 1989, they passed some bill called the Toxics Use Reduction Act. It involves firms hiring toxic-use-reduction certified planners who will prepare plans for them to reduce their use of hazardous materials and production of by-products and emissions. You would be supportive of such a thing, is that correct?

Mr. Jones: That is correct. Again, by assessing the overall risk to pollution, to spills, then you can begin to put into place good, sound engineering controls to reduce the use of more toxics. It's an excellent way.

Mr. Marchese: I read that. Does the government agree with you about introducing such an assessment kind of procedure, or are they disagreeing with you? You must have proposed it while they were drafting it, right?

Mr. Jones: We have had talks with several MPPs during the course of this bill. I would hate to say what the government does or does not agree with.

Mr. Wilkinson: Thank you, Randy, for coming. On behalf of the ministry, BP Canada, as one of the MISA companies, has one of the most impeccable records in this province, and we appreciate that, and the citizens appreciate all the work that you've done. You've really been a leader in your own subsector of MISA. You have, voluntarily, a spills contingency and a spills prevention plan. Unlike some of the other people in your sector, my records here show that you haven't had any spills. So, obviously, the approach you've taken is working for the benefit of the environment, and we appreciate that. We want to get everybody else in your sector up to where you are.

Just to be clear, because you had raised some concerns, there would not be an environmental penalty on a company that was within their certificate of approval. I know that was something you raised. You'll be glad to know that we're going to make spills prevention plans mandatory, as the minister said last week, and this applies both to water and air, because of that suggestion. The fact that your company is ISO 14001—it would be a great day in Ontario if all of the companies in MISA were 14001 and had the same type of track record that you guys have.

Mr. Miller: Thank you very much for your presentation. It seems quite logical to me.

My background, prior to being a politician, was running a small resort, and my experience with the Ministry of the Environment is doing things like small septic systems.

The approach seems to have changed over the last 30 years. I remember 20 years ago, when going to do a little septic system, the MOE would work with the resort and would actually assist in terms of planning out the small septic system etc. The approach seems to be switching to the government being more of a police force of the environment. I think what you're saying is that industry wants to work with government, and that approach, as supported by this IPAT report, would work better.

Mr. Jones: Absolutely. I want to be on the same page as the government that's regulating me. We need to have the same list of concerns, the same list of things that are important, and we need to come to some agreement on being proactive in what's at risk and being able to put in place the right level of mitigations before anything ever occurs. That becomes very co-operative, and it is possible.

I worked very closely with both state and federal regulators in the US on just these sorts of issues, actually inviting them to drills that would occur at my facility, working with them in the planning process, identifying sensitive areas that could be reached in the event something goes terribly wrong.

Mr. Miller: And a good start would be to use the IPAT report that was just done and build off that.

Mr. Jones: Yes, sir.

The Chair: Thank you very much for having come in this morning and for your thoughtful deputation.

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ONTARIO WASTE MANAGEMENT ASSOCIATION

The Chair: Ontario Waste Management Association.

Good morning. Please be seated and make yourselves comfortable. You have 15 minutes to make your deputation before us. If you have any time remaining, it will be divided among the caucuses for questions. Please state your names clearly for the purposes of Hansard and begin.

Mr. Rob Cook: My name is Rob Cook and I'm the executive director of the Ontario Waste Management Association. With me today is Adam Chamberlain, a partner with Aird and Berlis LLP, who also serves as a volunteer legal advisor to the OWMA board of directors.

I'd like to thank the committee for providing us with this opportunity to appear before you today and talk about the important principles contained in Bill 133. We are also supportive of Minister Dombrowsky's intent to bring forward amendments to the bill.

Unfortunately, like the committee itself, we are somewhat handicapped in being able to provide informed and useful commentary on the important principles in this bill because we know that amendments are forthcoming but we don't know the form and breadth of those amendments and are unable to assess whether they truly address the fundamental flaws contained in the bill.

We would urge the government and this committee to find a way to introduce the proposed amendments during

the committee process prior to clause-by-clause discussion, to allow stakeholders the opportunity to provide that meaningful input. The comments I am providing today relate to Bill 133 as currently drafted.

The Ontario Waste Management Association represents the private sector waste management industry in Ontario that invests in and manages the province's waste management system—a system that all of us in this room have come to rely on as an essential service. Our members directly manage over 90% of the waste and recyclables that are generated by Ontario's industrial/commercial and institutional sectors, and we manage over 80% of the residential waste and recyclables annually generated by Ontario municipalities and residents. Our management of residential waste takes place under contract with municipalities—an important issue that I will refer to later in my presentation.

OWMA and its member companies support the principle of "polluter pay." We are also committed to ensuring that Ontario has the highest standards of environmental care and protection and believe that those who cause environmental damage should bear the costs of response, abatement and remediation and should be held accountable by prosecution under our regulatory and legal system.

The Ontario Waste Management Association is a member of the Coalition for a Sustainable Environment. However, we are not a MISA-regulated industry. Some might question why we are members of the coalition and some might question why we are concerned about Bill 133 if we are not regulated under MISA. The answer is simple: Bill 133, as it currently exists, is flawed legislation that can and will likely be applicable to multiple-industry sectors in the future.

The bill erodes or eliminates natural justice principles that are fundamental to our system of regulatory fairness and upon which individuals and companies rely. In our view, any industry and any individual in this province should be concerned with legislation that deviates from these natural justice principles.

The government and this committee have focused on the applicability of Bill 133 to MISA-regulated industries. The implications of Bill 133 and its provisions have been measured and assessed against the types of industries and large companies in the MISA sector that the minister has indicated will be identified by regulation. But as I sit before you today, Bill 133 does not reference MISA facilities. The much-talked-about regulation to accomplish that goal is not before us.

Comments from the ministry and the design of this legislation contemplate the expansion of environmental penalties to other industry sectors in the future. It is therefore important to understand how environmental penalties and other provisions of Bill 133 will impact on other non-MISA industries—industries like waste management that are comprised primarily of small businesses that would face severe economic hardship if faced with an environmental penalty and no recourse to the judicial system. Over 60% of the members of OWMA are small

businesses, family businesses and many of the “ma and pa” type enterprises that commonly service much of rural and northern Ontario.

The waste management industry is also unique in that, unlike other industry sectors, virtually all aspects of both the public and private waste management systems operate under EPA approval instruments—certificates of approval—and the provisions and regulations of the EPA.

EPA approvals are required to simply be in business. A certificate of approval is required to operate a waste collection vehicle, to operate a recycling facility, to compost organic waste or to operate a landfill. Unlike other industry sectors, these approvals are not limited to environmental emissions or impacts. Waste industry approvals are very prescriptive in how a business operates and contain requirements for administrative and operational issues that have minimal or no environmental risk or consequence.

When the application of Bill 133 is extrapolated to the waste management industry, section 182.1 of the bill specifically identifies any certificate of approval contravention as being subject to environmental penalties, not just spills. Much has been said about Bill 133 in terms of it's applicability to spills but, as currently drafted, Bill 133 is broad in its application.

We support, by amendment to the bill, a narrowing of the scope of environmental penalties to spills to reflect the government's intent and the incorporation into the bill of a clear, concise, scientific definition of “spill.” We also support amendments to specify in the legislation which industries and/or facilities are subject to environmental penalties and not leave the broadening of environmental penalty application to regulations.

We believe it is a privilege, not a right, to do business in Ontario, but the government must ensure that legislation like Bill 133 distinguishes between those companies and individuals who are diligent and respect that privilege and those that don't. The fundamental changes in Bill 133, particularly surrounding due diligence and reverse onus, potentially remove that distinction.

We support amendments that recognize due diligence as the foundation upon which environmental risk management has been integrated into business and operating practices over the past 25 years and amendments to restore due diligence.

Bill 133 also creates a new compliance threshold definition for any activity regulated under the EPA and associated approval instruments by replacing “likely to cause an adverse effect” with “may cause an adverse effect.” This radically changes the role and value of risk assessment and mitigation as they pertain to any activity regulated under the EPA and, more importantly, to the standard by which compliance or enforcement action will be determined. The proposed change in Bill 133 to “may cause an adverse effect” could negate the validity of conditions and limits contained in approval instruments already issued by the MOE.

A new compliance threshold will also make it very difficult to attract new or expanded private sector invest-

ment in the waste management system in Ontario. The Ontario government is currently seeking private sector investment in waste recycling infrastructure to facilitate the achievement of the government's 60% waste diversion goal. The change in the compliance threshold will make it difficult or impossible for Ontario waste companies to quantify and warrant environmental risk for financial institutions and investors when seeking investment capital. Investment will flow to other industry sectors and/or other jurisdictions, to the detriment of government policy initiatives related to waste diversion. We view this potential change as one of the most significant contemplated in Bill 133, and we strongly recommend that the committee amend the bill to retain the current threshold definition of an environmental consequence—“likely to”—as currently contained in the EPA.

I mentioned earlier in my remarks the fact that waste industry companies operate under contract to provide services to municipalities for managing waste and recyclable materials. The waste management system in Ontario comprises both public—municipal—and private entities that function as partners, customers, competitors or sub-contractors, depending on the business situation. In order to maintain a level playing field, it is imperative that private sector and municipal entities be treated equally under Bill 133.

In a speech by the Honourable Leona Dombrowsky in Toronto on December 8, 2004, she stated, “There is no intention to apply environmental penalties to municipalities, agricultural operations or the retail industry.”

There must be equitable treatment of both the public and private sector waste management entities under the bill. It's applicability must be for either none or all of the waste management system in the province. Municipal taxpayers will bear the cost of environmental penalties, whether environmental penalties are applied directly to municipalities or indirectly through service providers who pass that cost on to the municipality. Likewise, an unbalanced application of environmental penalties to private sector entities only could force municipalities to reduce their exposure to environmental penalties through their private sector contractors by assuming direct waste service provision at a substantially increased cost to municipal budgets and municipal taxpayers.

Rather than leave the significant issue of applicability to regulations, we recommend that the principle of fair application relative to the private and public sectors be contained in an amended bill, irrespective of which industry sector is ultimately identified in the legislation or the regulation.

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As members of the Coalition for a Sustainable Environment, we support the coalition's messages and positions delivered to the committee last Thursday by the Honourable Perrin Beatty:

We support amendments to the bill that narrow the scope of environmental penalties to spills and clearly define a spill.

We believe that the possibility of serving directors, employees and contractors with EPs should be removed by amendment.

We support amendments that confirm EPs will only be issued by an MOE director or more senior MOE representative.

We support amendments to specify in the legislation what industries and/or facilities are subject to EPs and not leave the broadening of EP application to regulations.

We believe that amendments are required to eliminate the potential for double jeopardy—the independent applications of environmental penalties and prosecutions.

We support the amendments that remove the reverse onus provisions and recognize and restore due diligence.

Finally, we support amendments that retain the existing EPA compliance threshold of “likely” and remove reference to “may.”

In closing, I would like to thank you for the opportunity to appear before you. As drafted, Bill 133 contains serious flaws that will hopefully be remedied by amendments proposed by the Minister of the Environment or by members of this committee. We urge the committee to provide all stakeholders with the ability to focus efforts in making Bill 133 better public policy by providing the opportunity to comment on the proposed amendments within the bounds of the committee deliberations and prior to the final committee report. Thank you.

The Chair: Thank you very much. We should have time for just one question, and that would be from Mr. Wilkinson.

Mr. Wilkinson: Thank you, Rob. It's good seeing you again, and we're glad that we're in this process. We were discussing just a few months ago that this would be the process our government is taking and the fact that we're looking for consultation.

I think you're probably the first group to come to us speaking on the industrial side of it that's not a MISA-regulated company, although I think some of the companies within you, in their other operations, are. I'd be interested if you'd just elaborate more about the necessity of having a level playing field in the waste management industry between the municipal and the private. It's the first time I've seen that comment. Could you just elaborate on that for us so we understand there should be balance, if it's—

Mr. Cook: Certainly. As I mentioned earlier, Ontario has a kind of—well, it's not a unique system, but it has a dual waste management system in that historically the private sector and private sector companies have managed waste from businesses, industries and commercial enterprises, exclusive of a municipal role. So it's a direct fee-for-service kind of provision. Municipalities, on the other hand, generally have managed residential waste. Within those two systems, there is some overlap and there's some competition. Municipalities own landfills, private sector companies own landfills—the same with recycling facilities, the same with collection vehicles.

Clearly, one of the concerns is that an uneven application of Bill 133 would disadvantage one side of that

equation, likely the private sector side, making it difficult to provide service, to compete and, certainly from the point of view of our being subcontractors, municipalities might be concerned about the liability their subcontractors would have for environmental penalties.

The Chair: Thank you for coming in this morning. That concludes the time available to you.

ONTARIO BAR ASSOCIATION, ENVIRONMENTAL LAW SECTION

The Chair: Ontario Bar Association, environmental law section, please.

Thank you for joining us this morning. You'll have 15 minutes to make your deputation to the committee. If there's time remaining, we'll divide it among the parties for questions. Please begin by stating your names for the purposes of Hansard, and proceed.

Ms. Sarah Powell: My name is Sarah Powell and I'm chair of the environmental law section of the Ontario Bar Association. I'm here today with Janet Bobeckho, who is also a member of the section. We're both certified specialists in environmental law by the Law Society of Upper Canada, and we're here on behalf of our environmental law section.

Just to provide a little bit of background, our section is comprised of 500 members, lawyers who practise in the area of environmental law. It represents a broad sector of lawyers, those in private practice as well as in government and non-government organizations and in-house counsel. Our section is a group of volunteers, and when we comment on legislation, what we try to do is to park our client hats at the door and look at it in as open a perspective as possible.

We did provide detailed comments to the ministry on January 7. Those comments were provided to the clerk on Friday, I believe, but if you need copies, I have additional copies here. Those comments that were provided on January 7 were detailed and covered several issues. Today, Janet and I would just like to address two specific issues. I'm going to address the first, which is the absolute liability issue, and Janet is going to address the threshold to establish contraventions under Bill 133.

I wanted by way of background to advise that in 2002, the Ontario Bar Association did support the concept of administrative monetary penalties, or, as they're now called, environmental penalties. Our section felt they were an important additional tool for the Ministry of the Environment in their enforcement package. At that time, though, our support was based on environmental penalties being for more minor offences or contraventions, as opposed to significant, \$100,000-per-day ones. We're not going to address that today; it is addressed in our written submission. We're just going to focus, as I said, on two issues: absolute liability with respect to environmental penalties, and the proposed threshold to establish contraventions.

I have to back up a little bit, because what I'm going to focus on is absolute liability with respect to environ-

mental penalties. I'm not going to talk about absolute liability in the context of part X of the Environmental Protection Act. That deals with compensation and the right to compensation. I think our section supports the idea that absolute liability is appropriate when it comes to spills—if you spill, you pay—and that concept is already in part X of the Environmental Protection Act. That is absolute liability for that part of the right to compensation. That right to compensation is proposed to be broadened, again based on absolute liability. We're not going to comment on that concept of absolute liability today. I'm just focusing on absolute liability with respect to environmental penalties.

That issue of absolute liability for environmental penalties is our most significant concern with respect to Bill 133 from the perspective of the legal community. It's our strong view that there should be a defence of due diligence available for environmental penalties, and I'm going to walk very briefly through why we think that's the case.

We believe that some minimum requirement of fault when it comes to environmental penalties strikes a better balance between fairness and the compelling need to protect the environment. We're not aware of any evidence that suggests that absolute liability leads to better compliance or better protection, and indeed the Supreme Court of Canada, back in 1978, concluded otherwise. I'm going to focus on the Supreme Court of Canada's decision back in 1978, because I think it's key to understanding why absolute liability, in our view, does not make sense in this context.

The Supreme Court of Canada considered the concept of liability in relation to public welfare offences back in 1978 in a key decision called *Regina v. Sault Ste. Marie*. In that case, the Supreme Court carefully considered the basic principles of liability and balanced them against the public goals sought to be achieved through regulatory measures. A unanimous Supreme Court held that strict liability, which means the ability to have a due-diligence defence, represented an appropriate compromise between the competing interests involved. It's argued that the Supreme Court's conclusions in *Sault Ste. Marie* are no less valid today. I'm going to walk through those reasons very quickly.

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I'm going to start by focusing on the principal arguments for absolute liability that were put before the Supreme Court.

First, it was argued that the protection of social interests requires a higher standard of care on the part of those who follow certain pursuits, and such persons are more likely to be stimulated to maintain those standards if they know that ignorance or mistake will not excuse them.

The second principal argument put before the Supreme Court was one of administrative efficiency. In short, it was argued that absolutely liability was the most efficient and effective way of ensuring compliance and the social ends to be achieved were of such importance

that it was prudent to override the unfortunate by-product of punishing those who may be free of moral turpitude.

Those were the two arguments for absolute liability that were put before the Supreme Court. In the end, the Supreme Court—again, in a unanimous decision—held that the arguments of greater force were argued against absolutely liability. I'm going to just give you a quick quote from the Supreme Court decision. It read:

"The most telling is that it violates fundamental principles of penal liability. It also rests upon assumptions which have not been, and cannot be, empirically established. There is no evidence that a higher standard of care results from absolute liability. If a person is already taking every reasonable precautionary measure, is he likely to take additional measures, knowing that however much care he takes, it will not serve as a defence in the event of breach? If he has exercised care and skill, will conviction have a deterrent effect upon him or others? Will the injustice of conviction lead to cynicism and disrespect for the law, on his part and on the part of others? These are among the questions asked. The argument that no stigma attaches does not withstand analysis, for the accused will have suffered loss of time, legal costs, exposure to the processes of the criminal law at trial and, however one may downplay it..." I'm just going to skip through for time. "In sentencing, evidence of due diligence is admissible and therefore the evidence might just as well be heard when considering guilt..."

I think at the end of the day, the Supreme Court also endorsed the recommendations made by the Law Reform Commission of Canada. The commission recommended that every offence outside the Criminal Code be recognized as admitting of a defence of due diligence. The commission stated, "Let us recognize the regulatory offence for what it is—an offence of negligence—and frame the law to ensure that guilt depends upon lack of reasonable care."

This case, *Sault Ste. Marie*, therefore recognized that strict liability was an appropriate middle ground between full *mens rea*, which is the intent to commit an offence, and absolute liability, which is absence of fault. This new category of strict liability that was created by the Supreme Court represented a reasonable compromise that acknowledged the importance and essential objectives of regulatory offences but at the same time sought to mitigate the harshness of absolute liability. Further, *Sault Ste. Marie* concluded that public welfare offences are *prima facie* classified as imposing strict liability. In other words, negligence was clearly to be the usual yardstick for public welfare offences. Almost 30 years ago the Supreme Court decision in *Sault Ste. Marie* embraced the merits of strict liability, and we believe that these reasons are no less valid today.

I think it's interesting that a more recent report, the 1990 Report on the Basis of Liability for Provincial Offences of the Ontario Law Reform Commission, also embraced the wisdom of strict liability and stated that no person should be held liable in the absence of fault. This rejection of absolute liability offences is reflected in the

central recommendation of the commission's report, namely that absolute liability should be abolished for provincial offences and that liability for all such offences should be based on some minimum requirement of fault. The commission concluded that this proposal would strike the proper balance between fairness and the essential law enforcement requirements of the larger community.

I'm just going to touch quickly on one more decision. The ministry's background documents relied to a large extent on the American approach and American experience. When we talked to the ministry during a stakeholder consultation, much emphasis was put on the fact that the American courts and the American system do not acknowledge a due-diligence defence. They do have absolute liability in many contexts—it's a different context—whereas we have always had across Canada the concept of a strict liability or due-diligence defence.

I just wanted to touch on the Supreme Court's decision in *Wholesale Travel Group*, because I think it's instructive. In that decision, the court said, "It must always be remembered that there are important differences between our charter and the Constitution of the United States. There are also important historical and other differences between Canadian and American society. Decisions of the highest American court should not be and must not be slavishly followed.... Indeed it is telling that several American commentators who have decided the imposition of absolute liability have argued in favour of a middle-ground position very similar to strict liability as that term is defined in *Sault Ste. Marie*."

For this reason, it's our view that there is a sound basis for strict liability and that it has proven to be a workable concept in Canadian law for almost 30 years. While the proposed EP, or environmental penalty, regime may ultimately facilitate imposition of significant penalties by removing the accused's ability to disprove negligence, for the reasons noted above we believe that the proposed environmental penalty regime will not likely result in a higher standard of care and therefore will not result in better protection of the environment. More care in the conduct of affairs cannot be expected by simply penalizing blameless conduct. It is our view, therefore, that the liability for an environmental penalty should be based on some minimum requirement of fault. This approach is more consistent with the Canadian approach and strikes a better balance between fairness and the compelling need to protect the environment.

I'm now going to hand over to Janet, who's going to touch briefly on the threshold to establish a contravention.

The Chair: Just to let you know, you have about three minutes left.

Ms Janet Bobechko: It won't take that long.

For the Ontario Bar Association, the proposal under Bill 133 to reduce the threshold to establish a contravention is very important. We don't want it to get lost in all of the other submissions that are being made.

We think it's an extremely significant proposal and, in general, that the threshold currently for prohibiting discharges is reasonable and clear. Changing the threshold to "may" will likely introduce significant uncertainty in the application of the law. We'd appreciate if the MOE would clarify its reasons for the proposed change. In our view, the current pollution prohibitions are sufficiently broad and general to ensure Ontario's environmental protection legislation is reasonably capable of responding to a wide variety of scenarios. That said, the pollution prohibitions should not be so broad and general that they ultimately violate the constitutional requirements of fair notice to citizens. It is our view, therefore, that the proposed threshold is potentially unfair and/or unconstitutional, in that it is vague and overbroad, and that it should be tied to some scientific standard.

We'd like to thank the committee for the opportunity to address you today and to make the concerns of the legal profession from the Ontario Bar Association known. We look forward to seeing a redrafted Bill 133 that takes into consideration submissions made through the EBR process and through this process.

The Chair: Thank you. We should have time for one question, and that would be from Mr. Barrett.

Mr. Barrett: I'd like to thank the Ontario Bar Association for your brief on liability and the threshold.

One reason this committee is sitting here is because of spills in the St. Clair River, but much of our discussion has been not so much on spills but more on penalties.

We don't have the amendments from the government. There was a presentation by the minister. She states, "More emphasis on spill prevention is required." On page 4 she states, "Environmental penalties will encourage companies to take action to prevent spills and to clean up a spill right away."

Really, there is no environmental legislation that focuses on prevention, as I understand it, in the province of Ontario. Do you feel environmental penalties are the route to take to prevent spills in the first place?

Ms. Powell: No. I think what is quite clear from the Supreme Court's decision is that there's no empirical evidence to show that absolute liability, which the EPs are based on, or I think penalties themselves, will lead to better compliance. What we did think was that for minor offences, the ministry needs better tools. A prosecution, we agree, is a very cumbersome tool, and the EP, the environmental penalty, is helpful for the ministry because they have another tool in their basket. Will it ultimately lead to better pollution prevention? I think it's doubtful.

The Chair: Thank you very much for coming in to make your deputation today. Just for members to note, the submission from the Ontario Bar Association was distributed earlier today in the packages that you received when you came in.

I would respectfully request members to be back in this room in time to start the deputations precisely at 4 o'clock. These hearings stand in recess until 4 o'clock.

The committee recessed from 1150 to 1602.

SARNIA-LAMBTON
ENVIRONMENTAL ASSOCIATION

The Chair: Good afternoon, everyone. Welcome or welcome back, as the case may be. This is the standing committee on the Legislative Assembly. We're here to consider Bill 133, the Environmental Enforcement Statute Law Amendment Act, 2004.

Our first deputant for this afternoon is the Sarnia-Lambton Environmental Association.

Welcome to you. Glad to see that you're seated. Please begin by stating your names for the purposes of Hansard. You'll have 15 minutes for your deputation. If you leave any part of it, I'll divide it among the parties to ask you questions. The floor is yours; please proceed.

Mr. Scott Munro: Thank you very much, Mr. Chairman. My name is Scott Munro. I'm the general manager of the Sarnia-Lambton Environmental Association, and with me today is Mr. Ronald Huizingh, who is the president of the organization. We're honoured to have the opportunity to appear before you today on behalf of the Sarnia-Lambton Environmental Association.

The association is an industrial environmental co-operative of 20 petroleum-refining, petrochemical and associated facilities operating in Lambton county. It has a long history of environmental achievement, tracing its origins back to 1952. In fact, its efforts to foster environmental stewardship precede the formation of the Ontario Ministry of the Environment and Environment Canada. We are particularly proud that the association has been used as a model for similar environmentally focused, science-based organizations formed in other areas of Canada and the world.

The association's mission is to promote a healthy and sustainable environment by ensuring that members are well-informed on environmental management and regulatory issues, by operating an extensive monitoring network of air and water quality monitors providing high-quality data in real time and by sharing information with regulatory agencies and the community.

Although primarily designed to track trends in environmental quality over time, the monitoring network also provides invaluable data to assist in managing accidental releases. The association's St. Clair River water quality monitor, for example, is now in its 20th year of continuous operation, providing hourly analysis of 20 contaminants potentially associated with petrochemical operations. The instrument records approximately 172,000 analyses per year, more than 98% of which are less than detection limits—less than one tenth of one part per billion. The system also takes automatic grab samples for subsequent analysis in a laboratory in the event there is a need to identify contaminants not included in the routine analyses. The instrument's on-line record is extraordinary. It has delivered quality data in real time close to 99% of the time throughout its life, most lost data being due to calibration procedures.

The association also tracks emissions, discharges and spills, aggregated for all of our members. Whether the

data relates to emissions, discharges, spills or levels of contaminants measured in the ambient environment, the long-term trends are consistent: All identify a trend to lower and lower emissions and improving air and water quality. Spills to the St. Clair River from our member facilities have declined from more than 100 per year in the 1980s to 10 or fewer over the past several years. Our goal is zero spills, and we recognize that reaching that goal is a challenge that must be met.

Over the past year and a half, the association and its member sites have provided their full co-operation and assistance to two initiatives by the Ministry of the Environment to address concerns about spills. When the minister deployed the SWAT team to conduct an inspection sweep in our area, we welcomed the scrutiny. All sites cooperated fully with the SWAT inspectors. We assisted the work of the Industrial Pollution Action Team, including providing tours of member facilities. In addition, we met with the International Joint Commission's Canadian chair, the Honourable Herb Gray and his US counterpart, Dennis Schornack, at their request, to discuss spills and the unique operation of our river water monitoring equipment.

It was within this spirit, and the long-established record of open co-operation with the Ministry of the Environment, that the association was surprised and disappointed that Bill 133 was introduced in the Legislature without prior consultation with stakeholders. Our association did provide comments during the brief comment period following the posting of the bill to the Environmental Bill of Rights Web site. Those comments form the basis of our submission today, and are included in our presentation package.

The Sarnia-Lambton Environmental Association fully supports the philosophy that industrial operations must be responsible for protecting the environment in which they operate and for restoring it when they cause an identifiable impact: the polluter-pays principle. However, in our view, Bill 133, as introduced in the Legislature, is fundamentally and fatally flawed. It is the antithesis of the philosophy of working together to prevent spills expressed in the Industrial Pollution Action Team report. Only through significant amendment can Bill 133 provide the kind of efficient, effective, equitable and progressive environmental protection Ontarians expect, and to which they are entitled.

As currently drafted, Bill 133's amendments to the Environmental Protection Act and the Ontario Water Resources Act place the owners and employees of operating facilities in Ontario in an untenable position created by the uncertainty of what is expected of them while denying them the due process guaranteed to every other citizen by Canadian law. A more practical and effective approach would be to focus on putting in place regulatory mechanisms to facilitate installation of spill-prevention programs and facilities. The unstable environment anticipated from Bill 133 as proposed is due to the convergence of four fundamental changes introduced by the legislation:

First, "contaminant" is defined in terms of "causes or may cause" an adverse effect. As all scientists know, there is no scientific means to disprove "may"; that is, you cannot prove the absence of all possible effects, no matter how unlikely they may be.

Secondly, in practical terms, the proposed revision to section 14.1 of the Environmental Protection Act is a requirement for zero discharge. The clause, which overrides any other provision of the act or its regulations, is a general prohibition on the discharge of contaminants into the natural environment, which, according to the definition of "contaminant" described earlier, means anything that "may" cause an adverse effect. By removing the phrase "that causes or is likely to cause an adverse effect," which appears in the existing wording of the Environmental Protection Act, any opportunity to create regulations to define acceptable limits on discharges or to define what is meant by the phrase "may cause" is lost. Wording designed to interpret the word "may" found in other sections throughout the Environmental Protection Act and the Ontario Water Resources Act, such as the Environmental Protection Act section 15.1's phrase "out of the normal course of events," loses its effect, given the proposed amendment to remove the phrase "that causes or is likely to cause" from section 14.1.

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Some people have referred to this proposed change as a change in the definition of the threshold beyond which an offence is said to occur. Unfortunately, it is that and more, effectively creating uncertainty in what the threshold is and preventing the regulatory agency from setting realistic, achievable limits that would provide clarity to the threshold while continuing to be protective of human health and the environment.

(3) Bill 133 attempts to establish a requirement for reverse onus of proof, requiring the defendant to prove that the discharge did not occur or that it could not have caused even a remotely possible adverse effect—taken with the definition of "contaminant," an impossibility.

(4) Bill 133 also attempts to create offences of absolute liability, depriving individuals and corporations of their right to reasonable defences established in common law and guaranteed in the Canadian Charter of Rights and Freedoms. The section also deprives defendants of reliance on proof of due diligence as a defence and as a consideration in mitigating penalties.

In our view, the convergence of these fundamental elements is unique to Ontario, creating an untenable situation for corporations and for the many individuals dedicated to operating their facilities in an environmentally friendly and sustainable way. Discharges of contaminants are prohibited; the accuser need not prove the offence; proof of absence of the offence is scientifically impossible, absence of a measurable environmental effect being insufficient; and defences well established in common law are excluded.

The association has also identified additional concerns with the proposed legislation and with the information released by the minister's office in support of the bill.

The bill introduces environmental penalties—monetary penalties imposed arbitrarily by any environmental officer for any discharge—without requiring that the accuser establish the likelihood of an offence, denying the accused access to due process and removing the right of appeal to the court system.

The Chair: Just to let you know, you've got about three minutes.

Mr. Munro: Thank you. Apparently, the rationale for environmental penalties is that the legal system works too slowly, and there is a need to quickly compensate municipalities impacted by a spill.

There is an evident dichotomy here. Most discharges—"discharges" is the word used in Bill 133 to which environmental penalties are attached—are not spills, and do not cause and are unlikely to cause an identifiable or measurable impact; hence, no compensation is required. For spills causing an impact and a need for compensation, the existing spills section of the Environmental Protection Act provides all the tools, such as director's orders, necessary to direct swift compensation to affected parties. Beyond the legal requirement, it is the established practice of our members to supply alternative sources of drinking water, in bulk or bottled, during those infrequent spills for which closure of community water intakes has been advised by health authorities.

The minister has stated publicly that Bill 133 will apply only to certain already closely regulated facilities, those to whom the MISA, or Ontario clean water regulations, apply. This intent, not identified in the bill currently before this committee, is fundamentally inequitable. Such a restriction would impose environmental penalties on only 140 of the thousands of facilities operating in Ontario. A brief review of the ministry's Web site, which features press releases of recent convictions under environmental legislation, demonstrates that the vast majority of offences, including spills, are not from MISA sites but rather from those that will be excluded from the legislation.

There is a preferable, viable alternative to the reactive, punitive approach to spills. That alternative is working together—industry, the regulatory agency and the potentially affected communities—to complete design and implementation of spill prevention measures. The Industrial Pollution Action Team report makes in excess of 30 recommendations designed to facilitate implementation of effective spill prevention programs. The report espouses a philosophy of decisions based on risk assessment and of creating multiple barriers between potential contaminants and their point of release. It also calls for vigilance through effective monitoring by the operators within facilities and in the ambient environment by the Ministry of the Environment. The report further identifies the need to reorganize the Ministry of the Environment such that it can work co-operatively with industry to speed the implementation of spill prevention measures.

The Chair: Thank you. That concludes the time we have available. Unfortunately, there won't be any time for questions. Thank you for coming today and for providing your deputation.

CANADIAN CHEMICAL PRODUCERS' ASSOCIATION

The Chair: The Canadian Chemical Producers' Association, please.

Good afternoon to you. Welcome. You have 15 minutes to present to us. You can use all or a portion of that time. If you leave any time remaining, I'll divide it among the parties for questions. Please begin by identifying yourself for the purposes of Hansard, and proceed.

Mr. Roger Hayward: My name is Roger Hayward. I am chair of the Ontario regional committee of the Canadian Chemical Producers' Association and president of Rohm and Haas Canada. My associate is Norm Huebel, who is the regional director of our association.

We represent more than 65 companies nationwide. Our member companies manufacture greater than 90% of all the industrial chemicals in Canada. We represent about half of the total chemical sector in Ontario, which includes downstream customers as well as upstream manufacturers such as ourselves. The chemical sector is the third-largest sector in the province in terms of sales. We have extensive manufacturing facilities in the Sarnia area.

We have practised environmental stewardship for decades through our Responsible Care initiative. Developed in Canada, the Responsible Care initiative has now been exported to more than 50 countries around the world. As a condition of membership, all of our CEOs must sign a commitment to continuous improvement to the six codes of Responsible Care, with its 151 management elements.

This initiative includes a commitment to the prevention of spills and releases and extends to the setting of environmental performance objectives that go beyond the baseline set by regulations. Compliance to this initiative is verified every three years by an independent team, which includes members of the public. It is because of this Responsible Care commitment that we find Bill 133 so disturbing.

I understand that the Minister of the Environment on Thursday, May 12, indicated that she would be moving amendments to the bill. Since I have not seen legal drafts of the bill, I am unable to comment on their adequacy in responding to our concerns. Therefore, I will comment on the bill, as it is currently drafted.

This bill, as currently written, treats everyone the same. Companies that have put environmental management systems and equipment in place to prevent occurrences are treated the same as those who have done nothing. The bill does not recognize safeguards or other efforts made by organizations to go beyond compliance. This treatment will discourage participation in programs such as the Ontario environmental leaders program or

independent voluntary environmental performance improvement. Leaders and laggards should be treated differently.

Another major concern that we have about the bill is its broad scope and applicability. We feel that it is appropriate that this bill has been referred to this committee prior to second reading so that we can explore the underlying principles of the bill. If this bill is targeted at spills, it would have been more appropriate to amend or develop a new spills bill rather than bring forward a bill that covers an infraction of the Environmental Protection Act or the Ontario Water Resources Act. In addition, if it is truly about spills, there should be no exemptions.

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A spill from any source can have an environmental impact. Since there is no correlation between the size of a spill or the environmental impact from a spill and the size the company, it is inappropriate and clearly discriminatory to target a select group of companies, MISA companies, for applicability of the bill. It should apply to all. Although the bill does not limit the applicability to MISA companies, news releases and statements by the ministry have indicated that, through regulation, it will only apply to MISA companies. An effective bill would apply to all. We recommend that the scope of the bill be narrowed to only cover spills to the environment, and not to other contraventions of the EPA or the OWRA.

In addition, applicability should not be limited on a discriminatory basis. Flawed legislation is not fixed by regulation. While we do not have an issue with the requirement to compensate for costs and damages associated with a spill, we do take issue with the environmental penalties as they are currently structured, as they look like fines without due process.

When we examine the bill in detail, we have the same concerns that you will hear from many others, from the Coalition for a Sustainable Environment. These include: absolute liability with removal of the due diligence defence; reverse onus—guilty until proven innocent; double jeopardy; unattainable or unclear thresholds; individual liabilities for EPs—that's employees, officers and directors; and the community fund. I would like to focus on a few of these.

Due diligence: If a company has voluntarily done everything that it can to prevent an occurrence, assessing an environmental penalty will not change behaviour, because the company has already done everything that it reasonably can. The environmental penalty thus becomes nothing more than a fine or a tax. We recommend that due diligence be introduced as a mitigating factor or consideration when assessing environmental penalties.

Unattainable threshold: By lowering the threshold from "likely" to "may," it becomes almost impossible for companies to operate, even under their current certificates of approval. It is virtually impossible to prove that something may not have an adverse effect on the environment. Because of this legal uncertainty, a company no longer knows what standards have to be met to be in compliance. We recommend that the current

wording in the Environmental Protection Act and the Ontario Water Resources Act be retained.

Reverse onus/individual liability: There is no practical means by which a director or officer of a corporation can micromanage all systems that are in place to prevent all contraventions. Consequently, the reverse onus provision, combined with the personal liability provision, places undue burden on individuals and will force them to focus their managerial efforts in areas that have little environmental benefit. Attraction of strong corporate directors will be made more difficult. With respect to employees, they cannot predict and prevent catastrophic equipment failures, even if sound preventive maintenance systems are in place. I could liken this to the person who has just had a medical examination by his or her doctor and been pronounced physically fit and then dies of a heart attack when leaving the doctor's office. We therefore recommend that the EPs only apply to corporate entities and not its directors, officers or employees.

Community fund: Although we have no problem with compensating communities quickly for immediate expenses associated with a spill, we do have concerns about the creation of a special fund to do so. Questions of purpose, access, administration and accountability are only a few that arise with respect to this fund.

It is important to point out that the Environmental Protection Act already provides municipalities with a right of compensation from the owner or person in control of a pollutant, and in some circumstances municipalities may be able to recover costs from the Environmental Compensation Corp. or from the Ministry of the Environment. Therefore, we recommend that this fund be dropped and other mechanisms for providing funds on a more timely basis be explored.

In conclusion, we believe in sound legislation that is appropriately focused on the policy objective and that differentiates between responsible and irresponsible behaviour. We believe that the party that spills should pay the costs for responsible cleanup and remediation. We believe in strong enforcement. We believe that people in vulnerable communities should be protected from spills. We believe in upfront consultation. Hindsight is always 20/20. The problems with this bill could have been avoided if the government had consulted with all the stakeholders, including industry, prior to the first reading of the bill.

We hope that our input will be helpful to the committee in its deliberations on this legislation and trust that it will result in a revised and more focused bill that will meet the needs of all Ontarians with respect to spills.

If there is one message we would want to leave with you, it is: This bill is not about spills, although that may have been the original political motivator. It will not accomplish the objective of reducing spills. That is why there has been such pushback from so many stakeholders. In fact, in the EBR posting after first reading of the 164 submissions, 157 were critical of the bill, and many environmental groups did not even respond to the posting. I

believe they did not respond because they did not want to appear to be critical of the bill, but were not supportive.

We thank you for your time, and we will be pleased to answer any questions you may have.

The Chair: We would have time for just one question. It is the turn of Mr. Marchese. If you can encapsulate the question and response in about a minute, that would be great.

Mr. Marchese: I had three questions, so I'll limit myself to the only one that is in my hand. Paul Muldoon said that MISA facilities accounted for 84% and 97.9% of reported liquid spills, by volume, in 2003 and 2004, respectively. What do you say to that statement of fact, it appears?

Mr. Norm Huebel: When you talk about statement of fact, I think—

Mr. Marchese: Or statement.

Mr. Huebel: One year or two years do not make a trend. I think you have to examine the spill pattern over the last 20 years and not just over basically a one- or two-year period. You have to look at trends. It's like anything else. You can get blips—

Mr. Marchese: So that's a blip, perhaps?

Mr. Huebel: It perhaps is a blip. The other thing you have to look at when you talk about spills is the environmental impact from a spill. As we said earlier, no one should be exempt from spills. To bring it back to something very simple: Which is more critical, if somebody spills a cup of arsenic or somebody spills 10,000 gallons of ethanol into the water? There's been no differentiation between the spill and the type of spill.

The Chair: Thank you for having come in today.

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CONSERVATION COUNCIL OF ONTARIO

The Chair: Conservation Council of Ontario, please.

Welcome. Please be seated. You'll have 15 minutes to present to the committee this afternoon. If you leave any time, it will be divided among the parties for questions. Please begin by identifying yourself for the purposes of Hansard and then proceed.

Mr. Chris Winter: My name is Chris Winter, and I'm the executive director for the Conservation Council of Ontario. I thank you for the opportunity to present today.

I wish to make three points with respect to Bill 133. First, this bill is needed and long overdue. Second, Bill 133 needs to be set within the context of clear goals and targets for a pollution prevention strategy for Ontario. Third, companies should pay the full clean-up costs for spills out of their own operating costs. Environmental penalties should be that: They should be a penalty, not just a means for recouping cleanup costs.

Bill 133 is needed because the voluntary approach to pollution prevention is stalling. It is needed because we still have spills: 3,700 incidents in 2003 and 3,900 incidents in 2004. It is needed because the number of spills is increasing and because there is no discernable commitment to pollution prevention within the MISA industries.

Seventeen years ago, the Conservation Council of Ontario gave the Lambton Industrial Society, now called the Sarnia-Lambton Environmental Association, an award for environmental leadership.

Twelve years ago, we gave the Canadian Chemical Producers' Association the same award for environmental leadership in establishing the Responsible Care initiative. The award was the Lieutenant Governor's conservation award, and it was the most prestigious environmental award in Ontario at the time. Other winners of the award have included Adele Hurley and Michael Perley for their work on the Canadian Coalition on Acid Rain, Charles Sauriol, Monte Hummel, the Coalition on the Niagara Escarpment, and Energy Probe. The award was managed by the Conservation Council of Ontario and presented by the Lieutenant Governor.

Twelve years ago, corporate stewardship was an innovative approach to pollution. It offered the promise of quick gains in reducing accidental spills. Responsible Care was one of the best, and it deserved to win an award. Chemical companies are better at handling chemicals now than they were 20 years ago, and Responsible Care is one of the reasons why.

But that was 12 years ago. Leadership means that you continue to press ahead. It means continuous improvement. What was at the cutting edge 12 years ago should be the industry norm now, and indeed corporate environmental management systems are much more of an industry norm, a fundamental part of the process for certification as an ISO 14000 company.

However, recent spills data show there has been little overall progress in reducing environmental accidents. Voluntary measures are failing to make headway towards the elimination of pollution and they are failing to accept responsibility for accidental spills. We need a stronger legislative approach that picks up where the voluntary approach fails us.

I consider environmental restoration to be a fundamental plank in any environmental management system. Therefore, I find it strange that Responsible Care does not include a commitment to environmental restoration in the event of a spill. There is a missing principle in Responsible Care—*mea culpa*—or to paraphrase Saint-Exupéry, "I am responsible for my chemical."

Thirty-nine hundred spills a year are not accidents; they are failures in a voluntary management system.

The second point I wish to raise is the need for a clear pollution prevention plan for Ontario, including goals and measurable targets. Bill 133 should be part of a broader pollution prevention strategy set by the province.

Pollution prevention refers to the preferred option of not producing or using hazardous substances in the first place. The Ontario Ministry of the Environment was at the forefront of this movement in the early 1990s through the pollution prevention office, and the federal government was instrumental in establishing the Canadian Centre for Pollution Prevention in Sarnia. This was in the early 1990s.

We need now to re-establish the Ministry of the Environment's leadership role in laying out the timetable and goals for pollution prevention, including achieving zero discharge of priority contaminants, the virtual elimination of all major environmental contaminants and the promotion of alternatives to hazardous chemicals and products. We need to set a target of less than 100 spills by 2008 and for Ontario to be at the bottom of the pack for North America in overall pollutant releases, not at the top.

The third point I wish to raise is with respect to the application of the fines for a community cleanup fund. I know there are many good precedents for applying environmental fines to habitat restoration, and some of them include Kentucky, Wisconsin, Oregon. There are some very good programs in place there where they take the fines and apply them to rehabilitation, not necessarily just recouping the costs but applying them to good environmental projects. I feel that using the environmental penalties to contribute to the cleanup costs of the company that they should already be paying for doesn't make a lot of sense.

What I would recommend is that companies be required to pay the full cost of environmental cleanup and community costs as standard procedure or through an industry-financed liability fund where that money is there up front, and that the environmental penalties be used for a provincial conservation fund, which would promote, among other things, pollution prevention. Fines are nothing to a company. They're a minor dent in profits. For them, the real damage, the real problem is one of image, and image is everything.

As part of a provincial pollution prevention strategy, and as part of Ontario's commitment to a culture of conservation, we need to establish a multimillion-dollar Ontario conservation fund that would be financed through a combination of donations, marketing agreements for conservation products, taxes on over-consumption and environmental fines. Now, if the chemical industry saw their fines being used to finance social marketing programs on the alternatives to hazardous products, then I believe you'd see some real action to prevent spills in Ontario, and we'd all be winners. I thank you for your time.

The Chair: Thank you. We will have time for a round of questions, beginning with Mr. Wilkinson. You've got about two minutes for each party to ask questions.

Mr. Wilkinson: Thank you for coming in, Chris. We appreciate it. I just want to talk about a couple of things. Prior to your submission, we just heard from the Canadian Chemical Association. They're very proud of the program that they're using, Responsible Care. But you were saying that it doesn't include responsibility for remediation. Is that correct?

Mr. Winter: If you look at the principles of Responsible Care—and I'm sure there are some applications where they will say, "Yes, we do commit to the rehabilitation"—the principles of it are community awareness and emergency response, which means they will

contribute to emergency response. It falls short of saying, "If it was our chemical, we are totally responsible."

Mr. Wilkinson: If the company was ISO 14001 certified though, that would then be part of that system. Is that correct?

Mr. Winter: Exactly. That's what I would consider a flaw in the ISO 14000 process, that it deals with environmental management systems. It doesn't deal with accepting responsibility.

Mr. Wilkinson: I believe there's an equivalent in the chemical industry, I think RC 14000. There's an equivalent for that industry.

The other question I had is, there's been a suggestion from others that in an environmental penalty regime there can be some negotiation between the MOE and a company. There have been suggestions made to us that those settlement agreements would be made public, that they would be posted on the Environmental Bill of Rights. Could you comment on whether or not you think that is a wise idea?

Mr. Winter: It's the first I've heard of it, but offhand I would say very much in favour. I think everything should be open and above-board. The more we bring this out into the open, the better. The more the public is aware of the hazards of chemical use and the costs of chemical use, both environmental costs and community costs, health costs, the better off we will be.

Mr. Barrett: Thank you, Mr. Winter, for your presentation from the Conservation Council of Ontario. You state in your brief that Bill 133 should be part of a broader provincial pollution prevention strategy. Is it possible for this bill itself to be amended to have a framework that would actually consist of pollution prevention or spill prevention?

I know in the IPAT report there are 30 recommendations, and much of it does relate to prevention. They indicate that at present in Ontario there is no regulatory requirement for pollution prevention or spill prevention under Ontario environmental legislation. Do you feel in the next couple of days it's possible for us to completely rewrite this legislation to fulfill that need?

Mr. Winter: I think it is entirely possible for you to rewrite this legislation in any way or shape that this committee agrees is desirable. With respect to establishing—

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Mr. Barrett: Do we have enough time, though? I'm concerned.

Mr. Winter: It depends. What I would suggest with respect to Bill 133 is that you proceed with it and build and craft a pollution prevention strategy around Bill 133, where it is just one piece of the program. The environmental leadership program is one piece of it as well. If you're looking at a truly effective provincial strategy for pollution prevention, it has to start with a goal, it has to have measurable targets and it has to have a range of instruments, which include voluntary measures and commitment; the regulatory base, the setting of baseline performance and environmental standards; the enforce-

ment of those; the economic instruments, which includes both the penalties and incentives to encourage companies to be leaders; and public education and public involvement.

Where I'm critical of the lack of a strong provincial strategy is in that we haven't really wrapped it all together and marketed a pollution prevention strategy. We're dealing with some of the pieces of it without understanding why we're doing this. We're doing this because we want to eliminate pollution.

Mr. Marchese: Mr. Winter, a couple of questions. Many jurisdictions elsewhere in the world, including the European Union, have adopted prioritized lists of pollutants and have used those lists as a basis for developing differential pollution prevention, spills prevention, spills contingency, mitigation and notification requirements. I'm assuming you agree with this.

Mr. Winter: Yes.

Mr. Marchese: When you say, "We need to re-establish the Ministry of the Environment's leadership role in laying out the timetable and goals for pollution prevention, including achieving zero discharge of priority contaminants and the virtual elimination of all major environmental contaminants," what does the chemical industry say to you about that?

Mr. Winter: About setting out timetables?

Mr. Marchese: About your suggestion that we do that.

Mr. Winter: The chemical industry doesn't say much to me these days.

Mr. Marchese: They don't talk to you these days?

Mr. Winter: No. No one's really talked to us since about 1995.

Mr. Marchese: That doesn't sound civil to me.

Mrs. Donna H. Cansfield (Etobicoke Centre): We talk to you.

Mr. Winter: Now you do. Now people talk to us again.

Mr. Marchese: Isn't that nice.

"I would recommend that companies be required to pay the full cost of environmental cleanup and community costs as a standard procedure, or through an industry-financed liability fund." What do they tell you about that?

Mr. Winter: An industry liability fund exists in other sectors. I think it's a new idea for this sector. It's just something I put in today.

Mr. Marchese: I see. I thought this was—

Mr. Winter: I haven't broached this with the industry. In fact, it's an idea that I've just developed in response to this notion of a community cleanup fund.

Mr. Marchese: So this is a new idea of yours?

Mr. Winter: But it is based on established precedents in other sectors. If you look at the nuclear industry, there's a \$6-billion fund for the cleanup and decontamination of sites and disposal of used nuclear fuel. In the aggregates sector, there's the abandoned pits and quarries fund. There are precedents within other industry sectors,

where money is put up front to deal with environmental problems.

The idea of setting something up for the chemical industry or for the MISA-regulated industries, where they put the money up front that just kicks right into play as soon as there is a spill to deal with the cleanup and the community costs, has plenty of precedent.

Mr. Marchese: Maybe you'll get a call.

Mr. Winter: Maybe.

The Chair: Thank you for having come in today, and for delivering your deputation.

WALLACEBURG ADVISORY TEAM FOR A CLEANER HABITAT

The Chair: Wallaceburg Advisory Team for a Cleaner Habitat, please.

Welcome this afternoon. You'll have 15 minutes to make your deputation to the committee. If you leave any time remaining, we'll divide it among the parties for questions. Please begin by stating your name for Hansard, and then proceed.

Mr. Jim Hasson: My name is Jim Hasson, and I'm the director of research and development for the Wallaceburg Advisory Team for a Cleaner Habitat. I'm honoured by this opportunity to address this legislative committee on behalf of the Wallaceburg Advisory Team for a Cleaner Habitat, or WATCH. WATCH supports the Environmental Enforcement Statute Law Amendment Act as it is currently written.

WATCH is an incorporated not-for-profit environmental advocacy group representing Wallaceburg and surrounding areas concerning environmental protection issues in dealing with government, business, industry and other organizations. Our team was formed in the wake of yet another industrial spill into our source of drinking water, when hundreds of kilograms of a class A carcinogen were released into the St. Clair River in August 2003. Most infuriating to our community was that this spill was not reported for five days. The result was a water ban being issued by the medical officer of health.

Our membership has volunteered its time and expertise for decades to represent community interests on committees such as Great Lakes United, Friends of the St. Clair River, the Binational Public Advisory Council, the St. Clair River Remedial Action Plan, the Industrial Pollution Action Team and a host of other environmental protection committees.

This afternoon, I would like to focus on the recommendations of the Industrial Pollution Action Team report and environmental penalties. On April 19, 2004, Minister of the Environment Leona Dombrowsky announced the formation of an eight-member Industrial Pollution Action Team, or IPAT. The mandate of IPAT was to examine the causes of industrial spills and dangerous air emissions and recommend to the government prevention measures for industry and others. On August 9, 2004, the IPAT report was released to the public and was unanimously endorsed by the WATCH organization.

To quote from the first point of the first chapter of the IPAT report, titled "Concerns Expressed by the Communities":

"In establishing IPAT, Minister Dombrowsky placed particular emphasis on the need for a community-based process and community perspectives on the problem of spills to the St. Clair River. Throughout our work, we have been moved by the profound impact that repeated spills to the river have had and continue to have on local residents. The communities are deeply concerned about the short- and long-term impacts on human health of repeated, serious spills to air and water in the St. Clair River area, and the implications those spills may have for aquatic and terrestrial habitats. Community representatives repeatedly reminded us that this is a long-standing problem, with many spills over many years. They are of the view that offenders have not received sufficient (or in some cases any) penalties for spill events, and may be considering spill-related fines as simply the 'cost of doing business.'"

The IPAT report includes 15 findings. To quote from "Finding 2, Current approaches to managing spills are not sufficiently risk-based":

"[W]e believe there may be potential for a formalized system of tiered penalties, along the lines of 'misdemeanor' and 'felony' offences, with ticket penalties for minor offences and in-depth investigation and enforcement for major offences. (Such an approach must however be carefully evaluated; we are concerned that a 'ticket' system used inappropriately could in fact trivialize serious offences.) Major offences could force a recall of the certificate of approval and an immediate order to correct the problem."

The IPAT report included 35 recommendations. To quote IPAT recommendation 7, "We recommend that the ministry investigate the potential of a comprehensive risk-based approach to spills response, including a tiered enforcement strategy employing tickets for minor offences, and more in-depth investigation and enforcement action for major offences."

Other IPAT findings detail how downstream communities are not recouping the full costs of spills and recommends that the ministry seek ways to institutionalize the delivery of a portion of the fees and fines associated with spills management to the parties that bear the costs of spills. That IPAT recommendation is another component of Bill 133.

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WATCH supports the Environmental Enforcement Statute Law Amendment Act as it is currently written. If our organization were to be so bold as to recommend one enhancement to Bill 133, it would be to request that the environment ministry publish an annual report for the public that includes the number of spills reported, the number of investigations conducted, the number of penalties awarded and the number of penalties collected.

Bill 133 is all about protecting communities. WATCH asks this legislative committee to support the recommendations of the IPAT report, many of which are

admirably addressed by the Environmental Enforcement Statute Law Amendment Act. Thank you very much for your time.

The Chair: Thank you. We'll have some time for questions, beginning with Mr. Miller. You'll have just a touch over two minutes for your questions.

Mr. Miller: Thank you for your presentation today. There have been some earlier presenters who mentioned the IPAT report. The acting medical officer of health attached that to his submission, and BP Canada Energy also mentioned the IPAT report and talked about pollution prevention and many of the recommendations made in the IPAT report, which don't seem to have been picked up in Bill 133. I was surprised to learn from one of the presenters that companies aren't required to have spill prevention plans. I would have thought that would make sense in this bill. Do you have any comments about that?

Mr. Hasson: Sure. I don't think the intention of Bill 133 was to address all 35 recommendations of the IPAT report. The IPAT report covers off some of those recommendations very well. Some of the additional IPAT recommendations were to develop detailed spill contingency plans and to bring up to date the MISA regulatory requirements, which have not been updated since 1990. There are 35 recommendations in the IPAT report, and certainly Bill 133 does not address them all. However, it is a very good start.

Mr. Miller: The first one is that Ontario's environmental management framework is largely reactive, not preventive. I get the impression from many of the industry people who have been here that they would like to work with the government and the Ministry of the Environment to try to prevent spills, but a few aspects of this bill—there have been about four key ones that have been highlighted, but they feel especially the EPs, environmental penalties, may actually hurt the end goal, which is prevention of spills into the environment. Any comments?

Mr. Hasson: I don't see environmental penalties as hurting prevention of spills at all. Industry wants to work with the ministry and with the communities. As our good neighbours such as the Sarnia-Lambton Environmental Association have stated, there's a lot of good work that's happened over the last 20 years. However, our community continues to have to close their fresh water intake. Spills may have been reduced by 90% from 1985 until 2005; just imagine how our community felt in 1985.

Mr. Marchese: The previous speaker, Mr. Winter, made a suggestion and recommended that companies "be required to pay the full cost of environmental cleanup and community costs as a standard procedure, or through an industry-financed liability fund." Did you have a comment on that? Do you find them useful suggestions?

Mr. Hasson: I do find them useful suggestions. There are more costs involved than most people may realize. It's not just a matter of shutting off your fresh water intake, bringing in bottled water and cleaning up the impairment of the river or environment. During the water

ban of 2003, there were dentists' offices that had to close their business for the day; there were grocery stores that had to throw out produce. It turned our small community upside down. There's a whole lot more involved to compensation in the community than what most people might realize.

Mr. Marchese: Sure. We had the minister come here last week, and she stated that she was going to bring forth some amendments. A whole lot of people are concerned about not having seen them and would like to debate them. We have to introduce amendments by tomorrow, and then we are into clause-by-clause on Thursday, which means that most of you won't see them. You will, but they will be debated for clause-by-clause and during that time there isn't much room for changes, as you probably know. Usually, the government moves its amendments and usually has the numbers to win its amendments.

Does it concern you in terms of what amendments she might bring forth that you haven't seen, that it bypasses the usual process, second reading? We haven't had—

The Chair: I need you to be very brief on the response, please.

Mr. Marchese: I'll stop there.

Mr. Hasson: I'm not overly concerned with whatever recommendations might be brought by Environment Minister Leona Dombrowsky on this bill. I think the environment ministry has certainly shown that its heart is in the right place and that it is interested in protecting communities.

Mr. Wilkinson: Thank you, Jim, for coming. You really provide for us the voice of people who are downstream and are having to deal with this reality on a day-to-day basis. Just to give you some assurance, when the minister was here on Thursday—and following up on a point repeatedly made by the opposition, of which I must repeatedly remind them. The minister plans to introduce an amendment that would make spills prevention contingency plans mandatory.

It's interesting; as we do some of the analysis, we have a lot of companies that voluntarily have spills contingency and/or spills prevention. In some industries there are very few spills, and then in other industries, even where they have that voluntary regime, there are still a vast number of spills. Obviously, some work has to be done there.

From a personal basis, I had some brief experience in my hometown of Stratford where there was a water advisory and then a boil-water advisory. In your communities, did you have a time when that water intake was shut for about three or four days where there would be a question of risk about the fire department having enough water pressure? Is that correct?

Mr. Hasson: Absolutely. We were very fortunate, during a spill in February 2004 of 150,000 litres of an industrial solvent, that we did not have a major fire while our water intakes were closed down. Also, we were only technically capable of shutting our water intake down for approximately two days without risking further impairment. But keep in mind, even after two days, when our

medical officer of health, Dr. David Colby, who actually addressed this committee earlier, had recommended opening the freshwater intake, there were still trace amounts of MEK in the water, which residents of course would prefer not to have drunk. However, when you're in a situation where your industry is going to have to shut down—our automotive parts industry that does just-in-time delivery of parts—there are a whole lot of issues involved.

The Chair: Thank you for having come in today.

1700

CANADIAN VEHICLE MANUFACTURERS' ASSOCIATION

The Chair: The Canadian Vehicle Manufacturers' Association, please.

Good afternoon. Please be seated. Welcome to you. You have 15 minutes to present to us. In the event you leave any time, we'll divide it among the parties for questions. Please identify each speaker for the purposes of Hansard, and then proceed.

Mr. Mark Nantais: Thank you very much, Mr. Chairman, and good afternoon, members of the committee. My name is Mark Nantais. I am the president of the Canadian Vehicle Manufacturers' Association. I brought with me today some experts from our member companies. From Ford Motor Co., I have Lisa Kozma; from Daimler-Chrysler Canada, Paul Hansen; and from General Motors, Bryan Swift.

Let me begin by simply saying that our industry has quite a substantiated track record in terms of environmental performance and voluntary actions. We were probably one of the first ones in Canada to put in place the ISO 14001 environmental management systems, and clearly, that system's continuous improvement is one of the principles that is a cornerstone of all their activities.

Secondly, we were probably the most successful sector to put in place a voluntary initiative on pollution prevention itself, called the Canadian Automotive Manufacturing Pollution Prevention Project. That's a project which has delivered a 404,000-tonne reduction or elimination of toxic substances or other environmental contaminants of concern.

Thirdly, we've looked beyond pollution prevention and even into how we use the energy in our plants, and have made continuous improvement in the energy efficiencies of all our plant operations in Canada.

As it relates to Bill 133 specifically, we do remain quite concerned that Bill 133, as it is currently written, is unclear in its scope and intent, proposes overarching changes to the long-standing legislative environmental framework in Ontario and, as a result, will not achieve the objective of reducing spills to Ontario's waters.

In our view, Bill 133 creates uncertainty in the following ways: It is unclear as to what constitutes permissible discharges in Ontario. It discourages, quite frankly, effective environmental management. It discourages the best-qualified people from accepting roles as officers,

directors or environmental representatives of organizations. On the other hand, it encourages an adversarial relationship between the Ministry of the Environment and the regulated community, and may well have a negative effect on Ontario investment and innovation. Further, it may well erode principles of risk management and risk assessment.

With respect to specific concerns, we essentially are going to outline three for you today, with roughly three priority recommendations. The first is the significant lowering of the emission and reporting thresholds. Many of the current provisions of the Environmental Protection Act regulate discharges that "cause" or are "likely to cause" an adverse effect. The bill proposes amendments to provisions of the EPA to regulate discharges that "may cause" an adverse effect. This would be a fundamental change to the balance in the current environmental regime in Ontario and would create great uncertainty as to permissible discharges.

The proposed amendment to the definition of "deemed impairment" in the Ontario Water Resources Act, which extends potential liability to discharges that may enter the water, would have a similar effect. Uncertainty in the permitted threshold for emissions and reporting will make it extremely difficult for organizations to have certainty that their operations are in compliance with all applicable legal requirements. For example, section 14 would actually prohibit the discharger or causing or permitting the discharge of any contaminant that causes or "may" cause an adverse effect. The proposed expansion of the prohibition to discharges that "may" cause an adverse effect would create an extremely broad prohibition and raises the concern that many industrial discharges, including those permitted by the Ministry of the Environment or those within MOE standards, could actually be in contravention of the act, as they "may" have the possibility of causing an adverse effect.

As previously stated, the use of the word "may" would cause great uncertainty as to what environmental discharges are actually permissible in Ontario and, when combined with the proposed environmental penalty provisions, may discourage some companies from self-reporting. For a business, having certainty is an operational imperative, and anything that contributes to a lack of certainty may impede current investment or act as a deterrent to attracting new investment in Ontario. Furthermore, this change in threshold will jeopardize the current systems that businesses have put in place for the last 30-plus years to meet their environmental regulatory obligations in this province.

Additionally, the proposed fines and penalties under the EPA and OWRA have been increased significantly. While CVMA acknowledges the polluter-pay principle, the imposition of quasi-criminal fines and jail terms for individuals for discharges which "may" cause an adverse impact on the environment is inappropriate.

The proposed powers of Ministry of the Environment directors and officers to issue orders, notwithstanding that discharges are permitted under certificates of

approval, where discharges “may” cause an adverse effect, gives the ministry far too much discretion. This type of discretion could be subject to abuse and may result in inconsistent enforcement across the province.

We would therefore recommend as follows:

The proposed amendments to change the current threshold from “likely to cause” an adverse effect to “may” in the EPA, and from “may impair water quality” to “may enter the water” in the OWRA, should be removed from this bill. If the government desires consistency between the EPA and OWRA, then the EPA threshold of “likely to cause” should be the one used. Secondly, strict boundaries need to be placed on the powers given to directors and provincial officers to ensure fair and consistent application across the province.

The second item I’d like to address is director and officer liability. The bill proposes a significant expansion to the existing liabilities for directors and officers of companies and organizations. Currently, directors and officers of corporations have a duty to take all reasonable care to prevent the corporation from causing or permitting an unlawful discharge. The bill proposes that every director or officer has a duty to take all reasonable care to prevent the corporation from committing any contravention of either the EPA or OWRA, however minor it may be. Directors and officers would be guilty of a quasi-criminal offence, with the potential for fines of up to \$4 million per day and jail terms of up to five years until they proved themselves innocent. This proposed broadening of director and officer liability would likely impact the ability of organizations to obtain the most qualified directors and officers, particularly if there is no clarity as to what the directors and officers are actually expected to do.

The proposed amendments raise fairness issues. They will unfortunately have implications far beyond environmental matters, and it is not clear that they will result in any improvement to the environment. CVMA members do not support the changes proposed regarding director and officer liability in the bill. Those obligations are already laid out in the case law decision as it relates to *R. v. Bata Industries Ltd.* If the direction is to enshrine the Bata decision in legislation, the specific obligations for directors and officers need to be clearly defined.

We would therefore recommend that the current and existing obligations for directors and officers of companies should be maintained, as the Bata case already exists in case law. Therefore, the changes proposed in the bill, in our view, are unnecessary. Alternatively, if there is a need to further enshrine director and officer responsibility, then we would recommend that the provision require directors and officers to ensure that the organization establishes an environmental policy and program and, where applicable, a spill prevention plan.

The third area is the area of environmental penalties. The Ontario government can meet its environmental objectives by enforcing existing legal requirements using existing tools and, in our opinion, does not require environmental penalties. The environmental penalty pro-

visions in the proposed amendments to both the EPA and the OWRA raise real fairness issues, and may raise constitutional issues under the charter. The full impact of environmental penalties cannot be determined without a review of the regulations, as environmental penalties would be issued by the director for certain contraventions subject to the regulations. There appears to be a reversal of the burden of proof as to the elements of the offence at the tribunal for certain orders relating to discharges, and only limited appeal to the courts on questions of law.

The environmental penalty provisions specifically provide that the penalties are absolute liability offences, applying even where a person has taken all reasonable steps to prevent the contravention and would therefore be innocent in the event of a prosecution. The concept of due diligence was initially introduced by the judiciary to provide fairness in the area of regulatory offences. Due diligence provides an incentive to implement effective environmental management systems to ensure compliance with environmental laws.

There does not appear to be any basis to conclude that an absolute liability regime would improve environmental performance. Such a regime would be extremely unfair, penalizing companies as well as individuals, even though they have done everything reasonable in the circumstances. This is particularly the case, as the potential fines for individuals, including directors, officers, and employees of an organization, are up to \$20,000 per day. These monetary penalties, which are uncapped in the proposed legislation and which appear to apply to all contraventions of the EPA, OWRA, associated regulations, orders and approvals, may also be sufficient to create the stigma for an innocent individual, which would attract the protection of section 7 of the charter, security of the person. As a result, environmental penalties should not be applied against individuals.

In order to ensure that significant environmental penalties are only imposed after proper review to ensure appropriateness and consistency across Ontario, environmental penalties should only be issued by a director of the MOE. This will also ensure that the relationships between organizations and the MOE field officers are not impaired. Finally, both environmental penalties and a prosecution may occur for the same offence, thus raising the potential for double jeopardy.

1710

As it relates to environmental penalties, we recommend, if new provisions for environmental penalties are to be created, that the following conditions should apply: The penalties should be limited to a defined scope—that is, spills to water—and not apply to all contraventions under the EPA or the OWRA; they should only be issued by the director; penalties should only apply using the existing threshold of “likely” to cause an adverse effect; they should not apply to individuals; due diligence should be available as a complete defence to encourage environmental improvement; there should be a cap on environmental penalties and there should be a six-month time limit for issuing an environmental penalty; and

environmental penalties paid should be a factor in setting fines in the event of a prosecution.

In conclusion, Bill 133, as currently drafted, would impose an unnecessary burden on environmentally responsible companies with no associated environmental improvement. While the government has indicated that Bill 133 was intended to encourage compliance, level the playing field and improve accountability, we do not see this bill meeting those objectives. If amending Ontario's regulatory environment is the chosen path to achieve these objectives, the government must ensure that it develops effective legislation. Let's remember, pollution prevention is a mindset; it's a behaviour which needs to be encouraged. But regulating behaviour is a very difficult task. We believe the provisions must be realistic, justified and focused on meeting clearly defined objectives. The approach must deal with the current realities of our industry and other Ontario businesses. Maintaining and attracting new investment is critical to our province's ability to address its environmental obligations and ensure that the economy and the environment both benefit.

The Chair: Thank you. We will have time for perhaps one focused, succinct, less-than-one-minute question and response from each party, beginning with Mr. Marchese.

Mr. Marchese: Can you ask questions like that?

One quick question, Mr. Nantais: Do you get the impression the minister is of late listening to the concerns that you're raising?

Mr. Nantais: I think the minister has had the opportunity to receive a great deal of input. I think the minister, from my point of view, seems to be receptive to what she's hearing. Of course, from our industry's perspective, we hope that she will respond in a very constructive and favourable way.

The Chair: Thank you. Mr. Wilkinson?

Mr. Marchese: Was that a minute?

The Chair: That's about it.

Mr. Marchese: It seemed like 30 seconds to me.

Mr. Wilkinson: Thanks so much for coming in. I know that your association has been one of the groups that has been quite active on this file for the last six months. I think this whole process of having something that's transparent, allowing this bill to get in here before first reading—I know the minister made a number of suggestions on Thursday, amendments she'll be introducing that address some of the practical concerns, though they would not change the intent of the bill, as far as I'm concerned.

Just to be clear, in your association, my understanding is that it's just the one Ford casting plant in Windsor that's actually MISA-regulated at the moment. Is that correct?

Mr. Nantais: I'll of course let the Ford representative respond to that.

Ms. Lisa Kozma: Yes, that's correct.

Mr. Wilkinson: Your companies overall are almost all ISO 14001?

Mr. Nantais: All the CVMA member companies are, and the final one is underway.

Mr. Wilkinson: That's great, thanks.

Mr. John O'Toole (Durham): Thank you very much. I do want to respect the importance of your industry while asking a question. I agree; the certainty of investors as well as the industry for a long-term commitment to the environment would certainly require clarification on the "may" clause as well as "likely." Are you satisfied that the current negotiations with staff are advising the minister to make appropriate amendments to clarify, with some certainty, this ambiguousness on the legal language of "may"? It just leaves it wide open to the discretion of some enforcement officer who has a problem. Are you satisfied? Or is this something very subtle but very important?

Mr. Nantais: I'm not going to say that we're not satisfied, but you hit on the very issue which is of paramount importance, not just to our industry but—

Mr. O'Toole: It's a case of law, and there will be challenges to that.

Mr. Nantais: Exactly. It removes the due diligence defence. It essentially makes it wide open, as you suggest, with a great deal of potential for inconsistency.

Mr. O'Toole: Do you have a clear recommendation here? I see it on the paper, where the minister has to change the definition from "may" to "likely" to cause. That's your recommendation here, as I understand it.

Mr. Paul Hansen: No, we have none at this time.

The Chair: Thank you for having come in today and for your deputation before us.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair: Ontario Forest Industries Association, please.

Good afternoon and welcome. You have 15 minutes to present before us this afternoon. If you leave any time, we'll divide it among the parties for questions. Please begin by stating your name for Hansard and then proceed.

Mr. Craig Gammie: Thank you, Mr. Chairman and members of the standing committee on the Legislative Assembly. My name is Craig Gammie, manager of environment and energy, Ontario Forest Industries Association.

The sector I represent is a significant contributor to the Ontario economy and has an excellent environmental improvement record. There's a separate package that logs the data on that environmental improvement record in your green package. I'm not going to go through it. I'm going to ask you to skip down five paragraphs, so I'll allow more time for questions.

We completely agree that there's a spills issue, a spills problem in Ontario, we completely agree that the status quo is not acceptable, and we completely agree that improvement is absolutely necessary.

We applaud the enthusiasm and dedication that the Minister of the Environment has brought to bear to minimize or eliminate spills and to get compensation quickly

to municipalities. The identification of the problems, the setting of improvement objectives, the IPAT process, the SWAT team working hard in southern Ontario—all commendable. But Bill 133 is not commendable. Bill 133 is so wrong, so far off course, that it needs to be scrapped so that we can make a fresh start and get the job done right. Bill 133 is in fact holding us back.

One of the shortcomings of the bill is that it will fall far short of what is potentially achievable in terms of spills reduction. In terms of environmental policy, Bill 133 is an environmental underachiever. The second shortcoming is that the bill is so draconian, it will discourage people from working in Ontario facilities, will discourage people from managing facilities in Ontario and will discourage people from investing in Ontario.

With a bill that is both an environmental underachiever and an economic threat, we thought it only reasonable to ask if there might be a better way to address the spills issue, the compensation issue and the retribution issue. The answer is a clear yes, and I will suggest some alternatives very shortly.

First, I would like to elaborate briefly on some of our concerns about the bill. A more detailed commentary is in our formal submission.

First is the new “may cause” standard. The “causes or is likely to cause” words in the current legislation are, in a sense, a definition of what is a violation. Lawyers tell me that it’s also a bar or a hurdle that the prosecutors must get over in order to get a conviction. It’s also a bar under which those with normal, acceptable, routine emissions pass without being charged or hit with an environmental penalty. There may be some grounds for clarifying that bar. There may be even grounds for lowering it. But Bill 133 lowers the prosecutors’ bar right to the ground. This is simply not defensible.

Some of my colleagues have defined that as introducing uncertainty. I wouldn’t call it uncertain at all. It’s on the ground. It’s very certain. It’s absolutely right on the ground. Putting the bar on the ground is great for prosecutors. There’s no doubt their conviction rate will increase.

But think about the bar from the perspective of an employee who is dedicated, conscientious and careful and is proud of what she and her colleagues have accomplished environmentally and has reported for years that discharges in her area have been well within regulated limits, have been well within certificate of approval limits and have been and are considered in the community as acceptable and permitted and for years have been easily and properly under that bar, off the radar.

With Bill 133, the bar is now on the ground and that same ongoing, routine discharge is now an offence. Bill 133 unreasonably changes the standard of what is a violation so that just about any discharge will be characterized as prohibited and subject to fines and penalties.

Lowering the bar with the “may” clause makes it easier to convict the clear offences, but it also makes it a cakewalk to get a conviction for what is not properly a violation.

It’s worse for environmental penalties, because it’s the same bar on the ground without even any controls to ensure that the accuser steps over it properly.

The very same argument can be made for the deemed impairment provision for the Ontario Water Resources Act. It’s just another bar moved right down to the ground so that every emission is a violation.

We can talk about lowering bars. But if we’re going to lower the bars, let’s look not only at the benefit for the prosecutors in the community but also the consequences for those who are already doing a commendable job.

1720

Putting the bar on the ground is shameful and unacceptable. But the new fine structure is a concern mostly because of the connection to the new standard. With Bill 133, it would be a cakewalk for a prosecutor to carry a trivial or even innocuous discharge over the bar and into much higher fines and even some new minimum fines. All sense of balance is gone.

The minister indicated last Thursday that many other jurisdictions are using environmental penalties and it’s time for Ontario to catch up. I took that to mean Bill 133 is that catch-up. But the issue is that Bill 133 is nothing like a lot of these regimes in other provinces. In fact, in BC, an environmental penalties regime has been introduced after it was introduced in Ontario in 2001 by the previous government, and it resembles exactly what is in the current Environmental Protection Act related to environmental penalties. It doesn’t look anything like Bill 133.

Bill 133 doesn’t just catch up. By setting the violation bar on the ground and squelching all legal rights, Bill 133 goes far beyond catch-up into territory where no other regulator in any democratic, free society would dare to even suggest going.

Legal rights, in the context of environmental penalties: the legal right of employees, directors and companies to impartial hearings is suppressed; the right of presumption of innocence is suppressed; the right not to be charged twice for the same offence is suppressed; even the right to present a full defence is suppressed—but it’s not suppressed in the BC AMP legislation.

Any one of these in isolation is absolutely unacceptable, but when you start putting two or three of them together, you get a piece of draconian legislation. There is no need for any of it, because the problems at hand can be addressed without having to settle for environmental underachievement and without the negative prosperity consequences.

How would we address the problems? We spent a lot of time identifying the problems that Bill 133 was intended to resolve. We found fair consensus among all involved that there are three main issues and three corresponding objectives. These are the three in the first table of my remarks document.

The three problems are: too many spills; it takes too long to get compensation to municipalities; and it takes too long to get retribution for carelessness.

The objectives are just the opposite: eliminate spills; instant source of funds for municipalities; and punishment within months—although some people wanted it within days. Some people want punishment for the carelessness within the hour.

We have also shared with MOE officials and others two alternative packages to address these issues. They're in the second, larger table in my comments. Both alternatives have three components to address the three problems identified. Spills prevention and control regulations are common to both alternatives, and they're the flagship of the alternative packages.

There are examples of spills prevention regulations in other jurisdictions. Two examples currently in place have been attached behind our formal submission. The first is an emergency response plan requirement in section 11 of the pulp and paper effluent regulations made under Canada's Fisheries Act. We're already regulated. The second is part 8 of the Canadian Environmental Protection Act. It's also included in your package. There are lots of other examples around the continent and around the world.

To address the problem of delayed compensation to municipalities, we suggest either a government fund, replenished by court-assigned costs plus interest and a small surcharge to build up the fund, or administratively assigned cost recovery payments. In the table, I call this AMP but it's not really AMP that I'm talking about. I want to get rid of the word "penalties." I will take it out of a subsequent presentation.

To address the concern that retribution for carelessness takes too long, we submit that pushing justice aside just to get speedy "justice" is nothing less than lynchmob vigilantism and we should have none of it. We can address the spills frequency and address the compensation to municipalities, but when it comes to retribution for carelessness, we're going to have to learn just to be a little more patient. Justice takes time, period.

We submit that either of the alternative packages in the table will achieve more than Bill 133, and at far lower cost, but to get there means withdrawal of the bill and starting fresh.

On Thursday, I think, Mr. Marchese called it odd that we were making depositions on a November 2004 version of the bill while the minister's draft 2, with many amendments, is sitting in her office. We've heard about them but we haven't seen them. I'd describe it as bizarre. What it means is that in the clause-by-clause analysis, you might spend two or three hours looking at a particular clause on Thursday that doesn't even appear in the draft on the minister's desk. This, to me, is a waste of legislators' time and it's a waste of our time—time we should all be spending on solving the problem, time we should all be spending on spills prevention regulations.

I hope you have the courage to recognize what a huge mistake Bill 133 is, and has been, and what a huge mistake it would be to throw good resources after bad. I hope you will drop Bill 133 completely so we can get on with the spills prevention regulations and then address

instant municipal compensation. We're ready to help. Thank you.

The Chair: We have about one minute per party for questions, including the question and the answer.

Mr. Wilkinson: Thanks for coming in, Craig. It's good to see you again. I would assume that the concept the minister mentioned last Thursday about mandating spills prevention, about raising the bar for all, which I believe all of your members have, would be a good idea.

Mr. Gammie: Absolutely. We support that, but not as Bill 133.

Mr. Wilkinson: I guess my concern is, as I look at the stuff from the ministry here, of the MISA members that are affected in your industry, we had spills at Abitibi in Fort Frances, Iroquois Falls, Thunder Bay, Kenora and Thorold; Bullwater in Thunder Bay; Cascade in Thunder Bay; Domtar in Espanola and Cornwall; Georgia-Pacific in Thorold; Interlake Acquisition in St. Catharines; Kimberly-Clark Canada in Terrace Bay; Marathon Pulp in Marathon; Norampac in my hometown of Trenton; Strathcona in Napanee; Tembec in Smooth Rock Falls, and Weyerhaeuser in Dryden. Sir, you have spills prevention and spill contingency, and in the last two years, all of those companies spilled.

Mr. Gammie: You've done your homework. What's your question?

Mr. Wilkinson: My question is, surely there is a need for Bill 133?

Mr. Gammie: Absolutely. I did not suggest that—

Mr. Wilkinson: You said we should withdraw it.

Mr. Gammie: I did not suggest that anybody in my sector should be exempt from spills prevention regulations. We need to get on with it.

Mr. Miller: You're here representing the second-largest industry in the province. The automobile industry was just before you, and they commented that they don't think this bill will actually achieve the goal of preventing spills. I gather you agree with that. What sort of approach do you think government should use in working with industry to try to reduce spills? I'm sure industry wants to reduce spills as well; at least, I'm guessing it.

Mr. Gammie: I agree. I think the bill is likely to have an effect. I believe any draconian legislation will have an effect on compliance. What I'm saying is that there is a better way, and that better way is spills prevention regulations plus a compensation fund.

Mr. Marchese: Mr. Gammie, the Industrial Pollution Action Team makes this recommendation on page 20: "We recommend that the ministry consider adopting a comprehensive risk-based approach for classifying, preventing and managing spills in Ontario, including creation of unambiguous definitions of spills to air and water." Any comment on that?

Mr. Gammie: I think it's excellent. There's a lot we can learn from the IPAT report that we can use in developing spills prevention regulations, including those comments and the concept of prevention, control, mitigation and compensation. Yes, I think IPAT is right on, but Bill 133 does not follow the IPAT report.

The Chair: Thank you very much for having come in today. That concludes your deputation.

Mrs. Cansfield: Mr. Chairman, could I ask the gentleman for a clarification?

The Chair: Go ahead.

Mrs. Cansfield: You made a comment about IPAT, but if I go into your Ontario Forest Industries Association submission, it actually says:

"When the whole IPAT report is read carefully, complete with caveats and nuances as above, the report, in our view, says...."

"While the IPAT report is full of interesting insights and ideas, we think that there is in the IPAT report no foundation...."

The Chair: That would be a question and not a clarification of what was said.

Mrs. Cansfield: I'm just asking, because he said one thing, coming from the industry, but it says another in the brief.

1730

The Chair: You're welcome to continue that round of questioning outside the proceedings.

Mr. Barrett: On a point of order, Chair: This follows from the presentation by the Ontario Forest Industries Association. I wish to put forward a motion to withdraw and replace Bill 133, and I have this in writing for the clerk.

The Chair: This motion has already been made and voted on, Mr. Barrett.

Mr. Barrett: This motion is a call to replace Bill 133 as well. It's different from the previous motion.

The Chair: Please read it.

Mr. Barrett: Does the clerk need to see it first?

The Chair: No, go ahead and read it.

Mr. Barrett: Thank you. A motion to withdraw and replace Bill 133:

Given that to get Bill 133—

Mr. Mario Sergio (York West): Mr. Chair, with all due respect, the motion is out of order.

The Chair: The Chair will rule on the motion after having heard it.

Mr. Barrett: Given that to get Bill 133 to an effective yet fair and balanced state would require almost total amendment.

Given that an amended version of the bill already exists but we are all using up valuable time working on an obsolete draft.

Given that it would be an unfortunate waste of good resources to find ourselves working on clauses of the bill that have already been removed by the minister's office.

Recommend that we finish the hearing, then drop the bill completely and instruct the ministry to immediately begin working on spills prevention regulations, using the sound work of IPAT as a foundation, and that the ministry begin very soon working on a fair, sensible measure to get compensation quickly to municipalities.

The Chair: Those in favour?

Mr. Barrett: I'd ask for a recorded vote.

The Chair: Recorded vote.

Those in favour? Those opposed? I declare the motion lost.

SIERRA LEGAL DEFENCE FUND

The Chair: Sierra Legal Defence Fund, please.

Good afternoon and welcome. You have 15 minutes to address us this afternoon. If there is any time remaining, we'll divide it among the parties for questions. Please begin by identifying yourself for the purposes of Hansard, and proceed.

Mr. Robert Wright: My name is Robert Wright. I'm a managing lawyer with the Sierra Legal Defence Fund here in Toronto. We've already handed out our summary of submissions, and prior to that we made a more detailed response to the EBR registry notice.

I'm going to focus on the need for environmental penalties, then I'm going to look at the Environmental Protection Act and the change from "likely to occur" to "may occur," and, finally, deal with the OWRA "deemed impairment" clause.

We are particularly supportive of those provisions, as we are supportive of the act. We are recommending that it be passed unamended, unless the amendment is to tinker with improvements which have been suggested in our paper.

Our experience with these issues comes from numerous private prosecutions, and also participating in prosecutions brought by the ministry. In particular, we've had one recently with the city of Kingston, and our experience there is that in some cases it takes up to five years for prosecutions to wend their way through the court, with uncertain result.

Regarding need, we think it's pretty clear from the lack of successful prosecutions that these environmental penalties are going to fill a real void in the enforcement process. They are civil penalties short of prosecutions, and there is a huge gap now, we feel, in enforcing the legislation, in particular the Environmental Protection Act and the Ontario Water Resources Act.

I've already mentioned our experience with prosecutions that we have participated in with the ministry, and those are only the most egregious ones. So if those take five years to wend their way through the court with the best evidence possible, you can imagine the roadblock in getting them going in the first place.

I'd like to point out to you in your deliberations section 14 of the Environmental Protection Act, which reads as follows: "Despite any other provision of this act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect." That's the clause that we feel is key to be amended to the word "may," as proposed in the act.

The other key clause that you should be mindful of when you're dealing with the clause-by-clause review is section 30 of the Ontario Water Resources Act. That says, "Every person that discharges or causes or permits

the discharge of any material of any kind into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters is guilty of an offence." That is the preferred wording.

The act will make the wording of the Environmental Protection Act consistent with the OWRA. The reason this is important is that the OWRA deals only with water. Under the Environmental Protection Act, you're also dealing with land and air emissions. The problem with the standard of "likely to occur" is that it is very difficult to institute any proceedings regarding air emissions.

Contrary to what the previous two speakers said, in our view, changing the wording to make it consistent with the OWRA is the appropriate response, and that is the level we should be aiming for, not the lower threshold. We put it as the lower threshold—lower in the sense of being less effective—of the Environmental Protection Act.

The previous gentleman indicated that, in his view, the wording change left wide open the circumstances in which a corporation would be prosecuted. In our view, not changing it would leave wide open the arguments of defence counsel, who consistently and successfully argue against convictions based on the existing wording.

I refer you as well to what we use as the bible. It's the Prosecution and Defence of Environmental Offences written by Berger. There he refers to a case, *R. v. Dow Chemical*, and says, "An Ontario court judge has ruled that a charge of pollution may be made out under the EPA only when, in addition to a discharge into the environment and an adverse effect, there is evidence that the adverse effect was not a direct result of the discharge but a consequence of a polluted natural environment." Even the courts are confused about the existing wording. That phrase, "the consequence of a polluted natural environment," was rejected by the Court of Appeal, but it's evident that the courts are having trouble with the wording as it exists in the EPA.

Berger concludes, "Undoubtedly, to address the types of cases like Dow Chemical, where courts struggled with the threshold of environmental risk required to sustain a pollution charge, Bill 133, the Environmental Enforcement Statute Law Amendment Act, proposes to lower the threshold for pollution offences to mere potential harm. Cases which would have been passed over in the past will now be pursued with renewed optimism." They're talking about prosecutions there, but in fact I think you will find that most cases fall under the environmental penalties regime and are dealt with there. I think it unlikely that matters will proceed also by way of prosecution unless they are really serious offences.

1740

I'd like to turn now to the "deemed impairment" provision under the Ontario Water Resources Act. We look at it often from the aspect of the Fisheries Act, which is the federal legislation dealing with water. What we have at the moment is better protection of fish and fish habitat under the Fisheries Act than we have under

the OWRA. The "deemed impairment" amendment will make that provision equivalent to, and as effective as, the Fisheries Act. Surely the people of Ontario are deserving of at least equal protection under our Ontario Water Resources Act as the fish are under the Fisheries Act. The essence of that provision is that you look at not only the effect on the receiving waters, which is something we argued recently in the Kingston case and is also an issue in another case before the courts now involving Inco, you look at the substance going into the water. That is the effect of that provision. That is what the Fisheries Act does. There is no reason why we shouldn't have the equivalent under the Ontario Water Resources Act.

The previous speakers also indicated they felt there was a risk that existing permitted emissions will become violations or subject to environmental penalties. You must remember that there is already essentially a licence to pollute up to a certain level under our legislation. We are not starting from ground zero. The bar is not on the ground; the bar is already significantly above the ground. So there is no fear here of lowering the bar to the ground, as was suggested.

In summary, we strongly support the bill in its present form. We ask that it not be watered down. There are very good reasons why those specific changes are necessary for enforcement of the environmental laws in Ontario. We urge you, if nothing else, do not water down those provisions. Let's leave a legacy for our children, for future generations. We want a legacy that has teeth and that we can be proud of. In our view, this bill will absolutely reduce spills, in answer to a question asked previously. Thank you.

The Chair: Thank you. We'll have about two minutes for each party to ask questions, beginning with Mr. Barrett.

Mr. Barrett: Thank you, Mr. Wright and the Sierra Legal Defence Fund. We have a direction from the minister as far as amendments. Some would weaken the bill, in your view, I imagine. Some would strengthen it. The minister has indicated that more emphasis on spill prevention is required. She does indicate in her presentation that environmental penalties will encourage companies to take action to prevent spills. Looking at the IPAT report, Dr. Heathcote, in finding number 1, makes reference to prevention. "It appeared to us that there was no regulatory requirement for pollution prevention or spill prevention under Ontario environmental legislation. Generally speaking, we found no preventive regulatory framework at all."

I know your presentation doesn't really touch on prevention, but do you feel it is possible to make amendments to this kind of bill to incorporate a preventive approach, a more proactive approach? As you've indicated, it does focus on penalties. I just wondered, is there any structure here to include prevention?

Mr. Wright: With respect, in our view, the bill is in fact preventive because it's aimed at having strong economic disincentives to carry on business as usual. I think you will find that the gentlemen at the table from the auto

industry and from the other industries will very quickly be able to adapt to the changes. By making it an economic imperative, if the penalties are in fact kept at a level that reflects the gravity of the spill—

Mr. Barrett: We know that Dr. Heathcote in the IPAT report seemed to reject the economic disincentives and did make, I felt, a fairly good argument for economic incentives, to reject the kind of command-and-control stick approach and to look at the carrot approach.

The Chair: A brief response, please.

Mr. Wright: I'm all for both approaches, the carrot and the stick. Without this bill, there is no stick.

The Chair: Thank you. Mr. Marchese.

Mr. Marchese: I guess you are probably not surprised at all to hear various stakeholders disagree with you, and they all seem to disagree.

Mr. Hayward, from the Canadian Chemical Producers' Association, says, "By lowering the threshold from 'likely' to 'may,' it becomes almost impossible for companies to operate, even under their current certificates of approval. It is virtually impossible to prove that something may not have an adverse effect on the environment. Because of this legal uncertainty, a company no longer knows what standards have to be met to be in compliance." They recommend "that the current wording in the Environmental Protection Act and the Ontario Water Resources Act be retained."

Mr. Nantais said, "[T]he use of the word 'may' would cause great uncertainty as to what environmental discharges are permissible ... and, when combined with the proposed environmental penalty provisions, may discourage some companies from self-reporting" even. He says, "For a business, having certainty is an operational imperative, and anything that contributes to a lack of certainty may impede current investment or act as a deterrent to attracting new investment in Ontario."

What do you think?

Mr. Wright: First of all, on the last comment, the failure to report or suggesting they may not report, I think that is unfortunate and not in the spirit of the bill, and I hate to hear that from an industry leader.

I think that the key here—and perhaps as you went on with your question, I focused on the last. I'd appreciate just very briefly you focusing on the original question.

Mr. Marchese: Obviously, they're against the change of language from "likely" to "may." They're all afraid

that the industry is just going to go to hell in a hand-basket.

The Chair: A brief reaction, please.

Mr. Wright: Yes. The myth that industry has been putting out is that somehow this leaves them in a quandary as to how to regulate their affairs. The fact is, penalties will not apply until a spill has occurred. So first you need a spill. A spill will have occurred—

The Chair: Thank you. Mr. Wilkinson.

Mr. Marchese: Let him finish for a second.

Mr. Wright: The spill will have occurred, and industry is trying to paint this as a "may" situation that occurs before the spills occur. The penalties do not come into force until a spill has occurred. Given the history with the Fisheries Act and the Ontario Water Resources Act, both of which deal with the same issue, this change in the standards, they are more than able to look at those past histories and gauge their affairs accordingly.

Mr. Wilkinson: Thank you for coming by today, Robert. So we're clear on this—because there seems to be some concern that this is draconian. I'm not a lawyer and you are. It's correct to say that if a company is doing something which is lawful, in other words, they are well within their certificate of approval, it would be bizarre to think that a company would somehow suffer a penalty for doing something that they're already allowed by the Ministry of the Environment to do. It has been thrown up that this is going to happen all over the place; we're going to issue certificates of approval on one hand and then turn around and charge people.

Just help me on the law, because I've been briefed on this. Obviously, the Ministry of the Environment would not have a penalty on something that we already approved a company to be able to do. Am I correct on that?

Mr. Wright: My answer can be very short: I agree. I'm puzzled by their comments as well.

The Chair: Thank you for your deputation today.

The proposed amendments to be moved during clause-by-clause consideration of the bill should be filed with the clerk of the committee by 5 p.m. on Tuesday, May 17, 2005. That's tomorrow. Clause-by-clause consideration of Bill 133 is scheduled for Toronto, in this room, on Thursday, May 19, 2005, at 3:30 p.m.

These hearings stand adjourned.

The committee adjourned at 1750.

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Première session, 38^e législature

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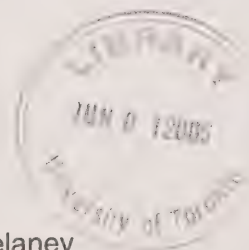
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Standing committee on the Legislative Assembly

Environmental Enforcement
Statute Law Amendment Act,
2005

Comité permanent de l'Assemblée législative

Loi de 2005 modifiant des lois
sur l'environnement
en ce qui concerne l'exécution



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Thursday 19 May 2005

Jeudi 19 mai 2005

*The committee met at 1537 in committee room 1.*ENVIRONMENTAL ENFORCEMENT
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
SUR L'ENVIRONNEMENT
EN CE QUI CONCERNE L'EXÉCUTION

Consideration of Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters / Projet de loi 133, Loi modifiant la Loi sur la protection de l'environnement et la Loi sur les ressources en eau de l'Ontario en ce qui a trait à l'exécution et à d'autres questions.

The Chair (Mr. Bob Delaney): I bring this meeting of the standing committee on the Legislative Assembly to order.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): On a point of order, Chair: This has been raised a number of times. I just want to point out and leave with the committee that we have before us at least 70 government amendments. I think if you include amendments from the other two parties, there are about 100 amendments. I am concerned about whether we will be able to adequately review 100 in the time allotted. Again, would we end up with a bill that is unrecognizable? So I am concerned about that. I know there has been a call to withdraw this bill and to replace it with a fresh piece of legislation.

The Chair: The point is taken. Should the clause-by-clause consideration of the bill not be concluded by the time the committee is scheduled to adjourn, then we would have to arrange another meeting time to continue, which would be after constituency week, and such time would need to be approved by the House—or we could meet at our regular scheduled time.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): We're scheduled to adjourn at 6?

The Chair: We're scheduled to adjourn at 6.

Are there questions, comments or amendments to any section of the bill, and if so, to which section?

Mr. John Wilkinson (Perth-Middlesex): My understanding, and I could be wrong, of clause-by-clause is that you call each section, and then when we get to a section where there's an amendment, the parties respectively move the amendments. Is that correct?

The Chair: I have an amendment before section 1. It's for section 0.1.

Mr. Wilkinson: Because it deals with an act not stated in the bill, that would be the one out of order, I think.

The Chair: The Chair rules that at this point the motion would be in order and, if moved, is debatable.

Mr. Barrett: With respect to this initiative and the number of amendments that I've put forward—

The Chair: Are you prepared to move the amendment? You need to move it.

Mr. Barrett: I thought it was a government amendment. Is number 1 not on our list, on page 1? I guess it's my confusion. So we're not having any opening statement before we—

Mr. Wilkinson: Not according to the subcommittee.

The Chair: If you wish to discuss the amendment that was tabled, you have to move it first.

Mr. Barrett: Thank you, Chair. I wasn't sure what you were moving over there. I thought it was a government amendment.

Mr. Wilkinson: I didn't move anything.

Mr. Barrett: The committee will find a PC motion on page 1.

I move that the bill be amended by adding the following section:

"Corporations Tax Act

"Corporations Tax Act

"0.1 The Corporations Tax Act is amended by adding the following section:

"Environmental expenses tax incentive

"13.6 In computing its income from a business for a taxation year, a corporation may deduct an environmental expenses tax incentive, as determined in accordance with the regulations, in respect of eligible environmental expenses incurred during the taxation year."

By way of discussion, the spirit of this amendment is found in the IPAT report. This is the report by the Industrial Pollution Action Team, which was led by Dr. Isobel Heathcote. She indicated that there are some tax exemptions. Many of them are more of a bolt-on, end-of-pipe type of pollution control exemption. She felt that within Canada—and I would say, by extension, in Ontario—we are behind other jurisdictions that have made effective use of economic incentives to encourage dischargers to go beyond compliance levels. Apparently, Canada is one of only a handful of countries without

these kinds of approaches in their environmental management tool kit. She makes reference to legislative frameworks in Denmark, Sweden and Germany.

By way of example, she mentions that in addition to jail sentences or traditional fines for non-compliance, this Legislative Assembly should consider a range of economic instruments: taxes on certain feed stocks or raw materials, grants, low-rate loans and accelerated depreciation programs for pollution prevention; very simply, to consider the carrot approach rather than relying solely on the stick, which has been the traditional command-and-control approach in the past.

The Chair: Any further discussion?

Mr. Rosario Marchese (Trinity-Spadina): Just a question. If there are no incentives given, that I'm aware of, how can you deduct an incentive that isn't anywhere in the act?

Mr. Wilkinson: I felt the motion to be impossible, and we won't be supporting it.

Mr. Marchese: I would be happy to support something that produces some incentives that allow for corporations to do the right thing. I think that would be useful. Unfortunately, the government hasn't provided any of those incentives. Because there are none, this motion becomes very difficult to support.

Mr. Barrett: Just a further point of explanation: We don't have an act; we have a bill or a draft bill. To that end, I'm requesting that, through amendment, this be incorporated in the proposed bill to be part of the legislative framework, as recommended to this government by their own expert group.

The Chair: Further discussion? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

Are there any amendments to section 1?

Mr. Wilkinson: I move that the definition of "environmental penalty" in subsection 1(1) of the Environmental Protection Act, as set out in subsection 1(2) of the bill, be amended by striking out "under section 182.1, 182.2 or 182.3" at the end and substituting "under section 182.1."

This motion removes reference to sections of the EPA that deal with provincial officer environmental penalty orders. I might add that it's identical to PC motion 3, which we would support, and we would withdraw this as long as we had agreement. But we want to thank the official opposition for PC motion 3.

The Chair: Questions and comments?

Mr. Barrett: My only comment is that this does mirror the motion on page 3. I think the wording is actually identical. I'm not sure what the process is when you get a coincidental occurrence like this.

Mr. Wilkinson: Because they're the same, my understanding is that the tradition here is that the government motion would come first, though we'd be more than happy to withdraw this motion and vote in favour of the Conservative motion since they are identical.

Mr. Marchese: If it's a government motion it's passed, and then you simply withdraw yours because it's already done.

Mr. Wilkinson: No, we can withdraw ours.

The Chair: Just to clarify, does the Chair understand that the government withdraws its motion?

Mr. Wilkinson: To be clear, it does.

The Chair: So it's withdrawn.

Mr. Barrett: That's fine. I appreciate that show of good faith, duly recorded in Hansard.

The Chair: The Chair can feel the love.

Further amendments to section 1?

Mr. Barrett: This would be the on page 3 then, just to make sure.

I move that the definition of "environmental penalty" in subsection 1(1) of the Environmental Protection Act, as set out in subsection 1(2) of the bill, be amended by striking out "under section 182.1, 182.2 or 182.3" at the end and substituting "under section 182.1."

I just want to indicate my appreciation for the courtesy extended by the parliamentary assistant.

The Chair: Questions and comments?

Mr. Marchese: None, but I wanted to make a request before we get on to the next section that people speak a little more loudly and clearly so that an aging person like me can hear a little more effectively.

The Chair: So noted. Shall the amendment carry? Carried.

Further amendments to section 1?

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(2.1) Subsection 1(1) of the act, as amended by the Statutes of Ontario, 1992, chapter 1, section 22, 1998, chapter 35, section 1, 2000, chapter 26, schedule F, section 12, 2001, chapter 9, schedule G, section 5, 2001, chapter 17, section 2, and 2002, chapter 17, schedule F, table, is amended by adding the following definition:

"'regulated person' means,

"(a) a person who belongs to a class of persons prescribed by the regulations and who holds or is required to hold,

"(i) a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act, or

"(ii) an approval, licence or permit under the Ontario Water Resources Act, or

"(b) a corporation that belongs to a class of corporations prescribed by the regulations;"

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This motion will ensure that environmental penalties must be issued against the company, and not company officials. We heard repeatedly from the deputants on this matter.

Mr. Barrett: By way of discussion, we concur with this motion. I think this is actually mirrored by a PC motion on page 53, if I'm not mistaken.

Mr. Marchese: Is this a weakening of the motion that was originally before us, or would you say that you listened to the various people who came here and it's not

a weakening of the act in any way; it just means that we're strengthening it somehow?

Mr. Wilkinson: Corporations, individuals and labour unions all came to us and said, "We don't want it to have a perverse effect where individuals feel that they should not immediately notify, if there is something that they have done, with fear that they will be subjected to a large penalty." In regard to our regulations, we need to, in our opinion, hold the corporations to account, and this will clarify the bill. That's why we did it.

Mr. Marchese: I understand. I can appreciate employees, but do you think directors fall into the same category?

Mr. Wilkinson: That's another section, and we'll be dealing with that.

Mr. Marchese: So this only deals with employees, not directors?

Mr. Wilkinson: Yes. We'll be dealing with that in subsequent amendments. This just deals with the subsection that we're dealing with, which is (2.1).

Mr. Marchese: OK. Thank you.

Mr. Barrett: It's my understanding that workers could be subject to a fine of up to \$20,000. There's just concern that it's unfair to employees when it is the company that should have full responsibility for its actions, and obviously for its assets. So I certainly saw consensus there that workers should not be held accountable when they're out there doing their best job, ideally with proper training.

Mr. Marchese: I'm in agreement that workers should not be held liable as well, for the record.

The Chair: Any further questions or comments? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(2.2) Section 7 of the act is amended by adding the following subsection:

"Contravention of section 14

"(1.1) No order shall be issued under subsection (1) as a result of a finding that a contaminant is being discharged in contravention of section 14 unless the contravention causes or is likely to cause an adverse effect."

This motion will ensure that control orders shall only be issued for a section 14 contravention, which references unlawful discharges, if the discharge "causes or is likely to cause an adverse effect."

The Chair: Mr. Hardeman, anything?

Mr. Ernie Hardeman (Oxford): No, no. That's fine.

Mr. Marchese: Just for clarification, in your view, Mr. Parliamentary Assistant, this increases the environmental protection we're looking for, or decreases environmental protection?

Mr. Wilkinson: In my opinion, it clarifies it.

Mr. Marchese: Given that you've been through these hearings and that you are the parliamentary assistant, you know this stuff better than some others. Others have argued that "likely to cause" versus "may cause" weakens environmental protection, not strengthens it. So when you say you're clarifying with the language, I'm not sure we achieve what many were trying to achieve.

Mr. Wilkinson: I appreciate the fact that the member for Trinity-Spadina has brought this up. I just want to say at the outset that if we look in total at the government package of amendments, we are adding teeth to what used to be known as administrative penalties, which were created by the previous government but, it's my understanding, were never used or proclaimed. Changing the term to "environmental penalties," it is a civil administrative penalty and not a prosecution.

The act, of course, allows us under the Environmental Protection Act to prosecute people. So it goes to the question of "likely" versus "may"—strict liability versus absolute liability. The amendments proposed by the government say that in regard to environmental penalties, which is a civil administrative issue, the bar will be "may," which we can refer to as "absolute liability," but in regard to prosecution—in other words, this is an offence where one is prosecuted. We know from the Supreme Court decisions in regard to the Soo, and particularly the Transport Robert case, that if there is jail time involved, the courts believe that the likely definition, which is a more difficult threshold for the prosecution to jump over, is one that meets the current constitutional interpretation of what is reasonable.

After listening to a number of delegations, I can tell you that industry would like "likely" on everything, but environmental penalties are going to be "may," and we're clarifying that when it comes to criminal prosecutions under the act the standard will remain as "likely." Since we in our draft bill at first reading had "likely" in there changed to "may," we have to remove all those references, which is why there are a number of amendments.

But just to share with the committee, whenever we're looking at that question of prosecution, we're going to ensure now, upon reflection and listening to the deputants, that that level should be "likely," and that's strict liability, but absolute liability will be dealt with in regard to administrative penalties. That's where we are on it.

Mr. Norm Miller (Parry Sound-Muskoka): Just for clarification then, section 14 cases involve prosecution and are more serious, so you're raising the bar from "may" to "likely," as many of the deputants—

Mr. Wilkinson: Which is what it was, which is status quo ante, and then the bill, as drafted at first reading, showed "may" in regard to issues of prosecution.

Mr. Miller: And you're raising that to "likely"?

Mr. Wilkinson: We're raising it back to "likely," so that that doesn't change in regard to prosecution.

Mr. Miller: Which I would agree with.

Mr. Wilkinson: So there really are two thrusts, but there is a difference between the whole criminal prosecution and what we're attempting to do—and I think the former government tried to do, but had not proclaimed the whole issue of civil administrative penalties, which we feel confident, in regard to the law, despite the protestation from some groups and industry, are reasonable, balanced and constitutional.

Mr. Hardeman: Just a question. I'm not a lawyer as the esteemed gentleman across is—

Mr. Wilkinson: No, and I wasn't before I got into this bill, Ernie.

Mr. Hardeman: I want to know whether that is the legal opinion of the ministry, that that's what we're doing. Hard as it is to believe, I do believe that everyone around the table is a politician, and they may be lawyers besides, but they're not here in their legal capacity. After I've heard that these changes are just going to do that—as an individual I have trouble understanding the difference between “may” and “likely.” I need some assurances that that's exactly what we're going to go do with all these changes, that that's the interpretation. When I learned the language, from Dutch to English—

Mr. Marchese: So you want somebody to comment; is that it?

Mr. Hardeman: Exactly. I'd like to know what the ramifications of changing “may” to “likely” are.

Mr. Wilkinson: If we could have Steve Carty, who's with the Ministry of the Environment and who, I might add, is a lawyer.

The Chair: If you could, just before your explanation, please identify yourself for the purposes of Hansard.

Mr. Stephen Carty: My name is Stephen Carty and I'm with the Ministry of the Environment. I wish I was a lawyer, but I'm not a lawyer. I'm just a—

Mr. Wilkinson: Sorry. Just trying to keep the record straight.

The Chair: Is there a lawyer in the House?

Mr. Carty: I'm a policy person, so I'll try and give you the policy answer, Mr. Chair, through you, on this question.

I think Mr. Wilkinson accurately described the changes that are being made in the motions from what is in Bill 133. As you know, there are many, many changes in Bill 133, changing the word “likely” to “may.” Because there were many comments and suggestions raised by stakeholders, industry, environmental groups, everyone on that change, many or some of the changes in Bill 133 of the “likely” to “may” are being changed back from “may” to “likely.” But there are three important sections where the “may” is being retained, which is the lower threshold, and that is for environmental penalties, as Mr. Wilkinson said, and for a couple of other order provisions of the bill in terms of preventive orders and orders that provincial officers can issue.

1600

But the other key change that Mr. Miller and you mentioned, where we're going back to “likely,” is for prosecutions. I think the key distinction Mr. Wilkinson was trying to make was the difference between the administrative-type sections in the bill and the parts of the bill where someone would go to court and be charged in court. That part of the bill, in terms of prosecutions, is going back to “likely,” which is what's in the bill now.

Mr. Hardeman: That's fine. Thank you.

The Chair: Shall the amendment carry? Mr. Marchese?

Mr. Marchese: I wanted to say, in spite of the explanation that was given, that I still support the original

wording of “may,” as the ministry had it. I suspect that they had it right then, so I'll be voting against it.

The Chair: In the likelihood that you may have other questions regarding the “may” or the “likely” or the “likely” or the “may,” I'm sure that the staff will likely answer them.

Shall the amendment carry? Carried.

Mr. Wilkinson: To reference page 6, I move that subsections 1(3) and (4) of the bill be struck out and the following substituted:

“(3) Section 14 of the act is repealed and the following substituted:

“Prohibition, discharge of contaminant

“14.(1) Subject to subsection (2) but despite any other provision of this act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect.

“Exceptions

“(2) Subsection (1) does not apply to,

“(a) a discharge that is authorized under this act or the Ontario Water Resources Act, if the discharge does not cause and is not likely to cause an adverse effect; or

“(b) a discharge of a contaminant that arises when animal wastes are disposed of in accordance with normal farming practices, if the only adverse effect that is caused or that may be caused by the discharge is an adverse effect referred to in clause (a) of the definition of ‘adverse effect’ in subsection 1(1).”

This motion clarifies that section 14, again, dealing with unlawful discharges, is concerned with the effects of the discharge. Second, it ensures that section 14 retains the same standard as now exists in the EPA in relation to discharges that are authorized under the EPA and OWRA, such as through approval.

In this bill, we're trying amend two other pieces of legislation: the Environmental Protection Act and the Ontario Water Resources Act. It's our contention, of course, if we're going to deal with this, that we need to have a common threshold in both acts for like matters so that there is no kind of legal room where people can try to appeal these things because there seems to be some inconsistency. That's what we're doing with this motion.

The Chair: Questions and comments?

Mr. Miller: In this case, you're going to “may,” I see. There's “if the discharge causes or may cause” under 14, “Prohibition, discharge of contaminant.”

Mr. Marchese: What's the change, in other words?

Mr. Miller: Yes, what's the change, because further down you use “likely.” So I'm confused.

Mr. Wilkinson: Again, this is all about clarification. As we looked at striking out that section, which is by striking out “causes or is likely to cause an adverse effect” at the end, that changed the threshold. This motion is that when it comes to unlawful discharges, which is a prosecutable offence, the threshold should be “likely.”

Mr. Miller: Thanks.

Mr. Wilkinson: And you'll find this—we'll be at this all afternoon and perhaps later on.

Mr. Barrett: When I look at 14(1), "Subject to subsection (2)," where "if the discharge causes or may cause an adverse effect," I'm concerned that that phrase is in there: "may cause an adverse effect." There are just so many contaminants. I know the mining association was concerned about this, and as I understand it, they are concerned if that phrase "causes or may cause an adverse effect" is left in there. As I recall, they would recommend "likely."

Mr. Wilkinson: I believe that's exactly what we're doing, Mr. Barrett. I know it's confusing.

Mr. Barrett: By reading further I would see that; is that what you're saying?

Mr. Wilkinson: Yes.

Mr. Hardeman: My question, again on "may" and "likely": If I read subsection 14(1), at the bottom it deals with "if the discharge causes or may cause an adverse effect." That's the way it's going to go into Bill 133. With the exceptions for the Water Resources Act, we're going to change it to—we'll have a "likely." So "may" is still part of this. This is one that's going to stay at "may," is that right?

Mr. Wilkinson: If it has to do with prosecution, it'll be "likely," as Mr. Carty said.

Mr. Marchese: I'm going to support the parliamentary assistant on this one.

The Chair: Further questions and comments?

Mr. Hardeman: I guess, Mr. Chair, that's the reason I'm having real problems with it, because Rosario is going to support the government on this one. It's obviously not the direction that I would like to see it go.

Mr. Marchese: I think you should vote against it.

Mr. Hardeman: OK.

The Chair: Let's test the waters here: Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsection 1(5) of the bill be struck out and the following substituted:

"(5) Subsection 15(1) of the act is repealed and the following substituted:

"When ministry to be notified, adverse effect

"(1) Every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment shall forthwith notify the ministry if the discharge is out of the normal course of events, the discharge causes or is likely to cause an adverse effect and the person is not otherwise required to notify the ministry under section 92.

"Same

"(1.1) The notice required by subsection (1) shall be given in accordance with any requirements prescribed by the regulations."

For my colleagues, the motion adds a regulation-making authority so that the regulation can specify requirements for when a person has to notify the ministry of a discharge under the section which is subsequential. The amendment also restores, as Mr. Carty was saying, the "likely" threshold to section 15 and removes overlap between notification under this section and section 92,

which is the section that requires notification of spills. I'll be voting in favour of it, as I'm sure you're sure, Mr. Chair.

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsection 1(6) of the bill be struck out.

Again, for my colleagues, the motion restores the "likely" threshold for the purposes of director cleanup orders.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move subsection 1(7) of the bill—

Interjections.

The Chair: We went through that last one very quickly. Mr. Wilkinson, did you offer an explanation for the amendment on page 8?

Mr. Wilkinson: Yes. The motion restores the "likely" threshold for the purposes of director cleanup orders, which we would be in agreement with.

The Chair: OK.

Mr. Wilkinson: Looking at page 9 in our package:

I move that clause 17(c) of the Environmental Protection Act, as set out in subsection 1(7) of the bill, be amended by striking out "or may damage or endanger" and substituting "or is likely to damage or endanger."

Again, the motion restores the "likely" threshold for the purposes of director cleanup orders.

The Chair: Questions? Comments?

Mr. Marchese: For the record, Mr. Chair, we're against most of these amendments that diminish environmental protection, and this is one of them. For the record, we're against it.

The Chair: Acknowledged.

Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: With great trepidation, I move that section 1 of the bill be amended by adding the following subsection:

"(7.1) The French version of subsection 18(1) of the act is amended by,

"(a) striking out 'd'une propriété' in the portion before paragraph 1 and substituting 'd'un bien'; and

"(b) striking out 'de la propriété ou sur cette dernière' at the end of paragraph 4 and substituting 'du bien.'"

1610

This motion is necessary to ensure that the French translation meshes correctly with the English text of the legislation. For my colleagues, we'll be seeing a number of references throughout the day.

Mr. Marchese: As an explanation, what does the original "d'une propriété" mean in English, versus "du bien"?

Mr. Wilkinson: Mr. Marchese, you would know much better than I. I'm sure that we could bring our friends from the ministry up to give us—

Mr. Marchese: Just a quick explanation.

Mr. James Flagal: My name is James Flagal, from the legal services branch of the Ministry of the Environment. You're going to see a number of motions that clarify the French translation to make sure that it meshes with the English.

Mr. Marchese: We understand that.

Mr. Flagal: What is here is "bien," which is "property," which, just like many words in English, has many meanings. Given the context, "bien" is the proper use for "property."

Mr. Marchese: My assumption is that "propriété" is supposed to mean "property," and it sounds like an "anglicisme" to me. But nobody else knows, right?

The Chair: Legislative counsel may be able to assist.

Mr. Doug Beecroft: Our office uses the word "propriété" to translate the word "ownership." If we're dealing with a particular piece of property that is owned, we use the word "bien." That's why this motion is here. It makes the language more consistent throughout other places in the Environmental Protection Act.

Mr. Marchese: Thank you. We could sure use you, Doug. Thank you, guys.

The Chair: Merci beaucoup. Shall the amendment carry? Carried.

Mr. Marchese: I move that subparagraph 7i of subsection 18(1) of the Environmental Protection Act, as set out in subsection 1(8) of the bill, be struck out and the following substituted:

"i. prevent the discharge of a contaminant into the natural environment or reduce the amount of a contaminant that is discharged into the natural environment, including eliminating the use or production of a contaminant,"

What we're doing here is providing the director with the capacity to develop and implement pollution prevention plans aimed at not just preventing or reducing the amount of a contaminant discharged to the environment but also at eliminating the use or production of a contaminant, which many deputants spoke to as well. There are many contaminants, such as dioxins and furans, that we want to eliminate from the production process and not emit them. We need to have provisions that allow this to happen when necessary, and this motion would allow us to accomplish that.

The Chair: Comments?

Mr. Wilkinson: I agree with Mr. Marchese in the sense that it gives the director the authority to require pollution prevention plans in a preventive measure order. Bill 133 already provides this authority for a preventive measure order to require pollution reduction plans. Our issue has to do with, one has the power at the director level to reduce it to zero.

We also heard from deputants in regard to the need for us to be able to get to zero in many industries over time. I believe that further amendments in the bill, that we agreed to, in regard to spills prevention are the necessary tools that we should use with industry to get them to move to what we both would consider to be the promised land.

Mr. Marchese: I didn't see anywhere in the amendments anything that speaks to what we're putting here. We would be interested in eliminating the production of contaminants that get discharged into the water. Nothing in this bill or in the amendments deals with that at all.

I'm not sure why we don't want to move in this direction. I'm not quite sure what the objections really are to our moving in that direction. The comments you made don't speak to that. Perhaps you might want to address it again in terms of why you think we can't do this.

Mr. Wilkinson: I believe that my comments on this matter are clear.

The Chair: Shall the amendment carry? All those in favour?

Mr. Marchese: Recorded vote.

Ayes

Marchese.

Nays

Barrett, Cansfield, Flynn, McMeekin, Miller, Peterson, Wilkinson.

The Chair: I declare the amendment lost.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsection 18(1) of the Environmental Protection Act, as amended by subsection 1(8) of the bill, be amended by adding the following paragraph:

"8. To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order."

Now, for my colleagues, this motion would authorize a preventive measure order to require that pollution prevention, spill prevention and spill contingency plans be amended.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that the French version of subsection 18(2) of the Environmental Protection Act, as set out in subsection 1(9) of the bill, be amended by,

"(a) striking out 'de la propriété' in clause (a) and substituting 'du bien'; and

"(b) striking out 'la propriété' at the end of subclause (b)(ii) and substituting 'le bien.'"

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Barrett

Mr. Barrett: PC motion on page 14. Is that correct, Chair?

The Chair: Yes.

Mr. Barrett: I move that section 1 of the bill be amended by adding the following subsection:

"(9.1) The act is amended by adding the following subsection:

“Pollution prevention, spill prevention and spill contingency plans

“18.1 Every person to whom Ontario Regulation 537/93, 760/93, 560/94, 561/94, 562/94, 63/95, 64/95, 214/95 or 215/95 applies shall, within six months after this section comes into force, develop and implement plans described in paragraph 7 of subsection 18(1).”

Again, it's driven, really, from the history of what we see in the development of legislation with respect to environmental issues that is reactive. We see a focus on environmental penalties as a continuation of a reactive, command-and-control, old-school, if you will, approach. The attempt here is to go beyond a reactive to a preventive approach.

Much of the advice to the government in the IPAT report by Dr. Heathcote focused on the issue and the need for not only more spill prevention, but pollution prevention. She indicated in the report that, generally speaking, in Ontario, it appeared there was no regulatory requirement for pollution prevention or spill prevention under Ontario's environmental legislation. Generally speaking, they found no preventive regulatory framework at all.

I know this came up a bit in testimony, and I know, regrettably, so much of the focus in the testimony seemed to be around penalties rather than around spills and prevention. So that was the rationale for doing this, and I know it's similar to at least one government motion, I think, found on page 18, which maybe gets more into contingency planning. I just thought I would make note of that. It's obviously not identical, but similar. So for the committee, I just wanted to mention that as well.

The Chair: Comments?

Mr. Wilkinson: I appreciate the amendment from the environment critic of the opposition. I can tell you that we do have a reservation and would not be able to accept it.

This motion, as far as we would understand, would require MISA companies to develop pollution prevention, spill prevention and spill contingency plans within six months of the section coming into force, and I think that's where our problem is.

1620

The government is introducing a motion, as you are referencing, that will require persons prescribed by regulation to develop and implement spill contingency and spill prevention plans, which I believe we would agree is proactive. These plans may be required at facilities beyond those that will be subject to EP orders. I think that would be balanced for the environment. However, it's probably unrealistic to require companies to develop a pollution prevention plan within six months. There's a great deal of difference between pollution prevention plans and spill prevention plans.

Also, I would say to my friend that the Environmental Protection Act currently does—I know you're asking whether or not there is the authority—have the authority, by regulation, to require companies to prepare pollution prevention plans. I would agree that this whole process

on Bill 133 has brought that to light, including the good work of Isobel Heathcote and the IPAT. It is definitely focusing on the need to get to the issue of prevention in the first place—and also spill contingency. But as we saw from, I think, some of the material we had from the ministry, there's a patchwork. Some are voluntary, and some are required. Some have contingency plans. Most don't have prevention plans.

Mr. Barrett: It sounds like two differences. Firstly, you're indicating there's a bit of a problem asking companies to develop it within a six-month time frame.

Mr. Wilkinson: The six-month time frame is a big issue for us, yes.

Mr. Barrett: Secondly, your amendment would apply not only to MISA companies but to everybody else. Is that what I heard?

Mr. Wilkinson: Environmental penalties, as we've said, by regulation, would be for MISA. But when it comes to the need to protect and have prevention plans and spill contingency plans, then we'd make sure that we had the authority to be able to do that.

Mr. Barrett: I'm part of a farm partnership. Would it apply to my farming operation, then? We're not in the MISA category; we're not that big.

Mr. Wilkinson: The quick answer would be no.

Mr. Barrett: I am concerned. I sure wouldn't want to ask everybody to develop these plans. I don't mind asking, say, British Petroleum or Esso. I think it's important to determine how far you went on this.

Mr. Wilkinson: This regulatory authority isn't any different than what was available under the Environmental Protection Act when you were in government. The question is whether or not you used the regulatory authority.

Mr. Barrett: It's no different, but you do have an amendment anyway to make it different?

Mr. Wilkinson: No, because we've also agreed with what Dr. Heathcote was saying about the need to get proactive and look at the issues of prevention and contingency. As we saw from our deputants, there is a patchwork across this province. Just in the MISA sector, where we have the greatest risk of large-scale contamination of the natural environment, we have a patchwork: required, not required, voluntary. Some have contingency plans. Some have spill prevention plans. I agree with Dr. Heathcote: We have to get to the point where preventing the spill is the order of the day. But obviously we're going to need to have some strengthened civil remedies here to make sure that we move things forward.

Mr. Barrett: I'm still not clear. Within the structure of this legislation, I limited mine to the MISA companies, many of the larger companies. I'm just not sure what other companies your amendment would draw into this. I am concerned. It does require infrastructure to do the paperwork and planning and to get the documents in. Many smaller companies have got enough paper on their desk as it is. How far would you go, then? Obviously, it doesn't include my farm partnership.

Mr. Wilkinson: I can assure you that I'm not the minister, nor am I the cabinet that would authorize all regulations that are proclaimed in this province. Right now, what we have to do is have a uniformity of regulatory power in this area, which we all agree is very important. But I can tell you that the six-month concept just seems impractical to us; laudable, but impractical. That's why we would vote against this motion.

Mr. Marchese: Let me understand: The six-month time frame bothered you most? That's the way you introduced the argument. If it was a year, would that be better? What would be an appropriate time that would make this more acceptable to you?

Mr. Wilkinson: In my opinion, the government would be best to consult with the stakeholders on all sides, like we've done on Bill 133, if we were to go down this path. The six-month deadline is not something I have seen come from stakeholders on both sides. To me, it seems to have come out of the blue, and in regard to making sure that we provide good government, I'd be concerned about having an arbitrary six months.

Mr. Marchese: I understand that six months might be complicated, but would a year or a year and a half make it easier for you to support it? That would give you enough time to consult with the stakeholders and so on.

Mr. Wilkinson: First of all, you can tell why I'm the parliamentary assistant and not the minister, Mr. Marchese. As a former minister, you'd know that, but I appreciate the question. The second thing is, my own personal opinion, as the MPP for Perth-Middlesex, is that this is something that would have to be consulted on broadly, similar to what we're doing here with this bill.

Mr. Marchese: I appreciate that. But if we have a long timeline, like a year and a half or two years maybe, you would have plenty of time to consult, no?

Mr. Wilkinson: I would wait until a consultation before I formed an opinion. I don't know about you.

The Chair: Shall the amendment carry? All those in favour? All those opposed? I declare the amendment lost.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(9.1) The French version of section 26 of the act is amended by striking out 'sa propre propriété' and substituting 'son propre bien.'"

This motion is necessary to ensure that the French translation meshes correctly with the English text of the legislation, no matter how much I mangled it.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(10) of the bill be struck out.

This motion restores the "likely" threshold for the purposes of the application provision of part V, waste management, with the same rationale as was presented to my colleagues earlier today.

Mr. Marchese: For the record, Mr. Chair, I'm voting against it.

The Chair: Mr. Marchese has recorded that he will vote against it. Shall the amendment carry? I declare the amendment carried.

Mr. Wilkinson: I move that subsection 1(13) of the bill be struck out.

Mr. Barrett: On a point of order, Mr. Chair: What page number are we on?

The Chair: Page 17 at this point.

Mr. Wilkinson: We're on 17. Maybe there was some confusion. We're on 17, so let's make sure everybody has that.

The Chair: Page 17 is the page I'm on.

Mr. Barrett: I don't have 17.

Clerk Pro Tem (Ms. Tonia Grannum): The new package of amendments that I put on your desks does have page 17. Some people may have been missing page 17. Sorry.

Mr. Wilkinson: Mr. Chair, I don't mind waiting. We better make sure that all of our colleagues are on page 17.

Mr. Marchese: I'm voting against it.

The Chair: Are you trying to do this to me again?

Mr. Wilkinson: Though I've read in the motion, and as we're all getting to page 17, I would say again, in regard to this motion, that this section restores the "likely" threshold to the definition of the term "restore the natural environment" in subsection 91(1) of the EPA.

The Chair: Discussion? Comments? Shall the amendment carry? The amendment is carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(13.1) The act is amended by adding the following section:

"Spill prevention and spill contingency plans

"91.1 Every person who belongs to a class of persons prescribed by the regulations shall, in accordance with the regulations, develop and implement plans to,

"(a) prevent or reduce the risk of spills of pollutants; and

"(b) prevent, eliminate or ameliorate any adverse effects that result or may result from spills of pollutants, including,

"(i) plans to notify the ministry, other public authorities and members of the public who may be affected by a spill, and

"(ii) plans to ensure that appropriate equipment, material and personnel are available to respond to a spill."

For my colleagues, this motion will amend part X of the EPA, which governs spills, requiring persons specified in regulation to develop and implement spill contingency and spill prevention plans. I believe, as we've all discussed, that it is in regard to IPAT and the need to get spill prevention in this province.

1630

The Chair: Discussion?

Mr. Miller: So I'm correct in assuming that this applies just to MISA companies?

Mr. Wilkinson: That is a very good question, Mr. Miller, and I'll just refer to our friends from the ministry.

The Chair: Again, for the purposes of Hansard, just identify yourself.

Mr. Carty: Stephen Carty with the Ministry of the Environment. In answer to this question, I think your

answer is in the first line of 91.1 where it says, "prescribed by regulations." So who would be subject to these plans would be spelled out in regulations before they're required of anyone.

Mr. Miller: So it could be more than these MISA companies; it's whatever the regulation says.

Mr. Carty: Yes.

Mr. Barrett: I have another question, Chair. Would contingency planning be a requirement of a certificate of approval?

Mr. Carty: Yes. You sometimes see it in certificates of approval or you can see it in orders issued by provincial officers.

Mr. Barrett: I see. Would he do it after a spill—

Mr. Carty: That would be on a case-by-case basis. So if you're out doing an inspection or you're issuing an approval to a specific plant, that could be a condition.

Mr. Wilkinson: If I might add, I think when we were looking at the MISA companies and looking at that, I saw a chart that showed that in some of the sectors of MISA they were all required by their certificate of approval to have a spill contingency plan. I can't recall which sector. On the other hand, we also had other sectors under MISA that were doing it voluntarily, where everyone was doing it voluntarily, and other ones where they were doing it voluntarily and some were and some weren't. It also goes to the whole issue of a level playing field. At least when we're bringing in a regulation, we would treat all like companies fairly by treating them all the same.

Right now, we have, as we agree, those companies that are environmental leaders and then we have some that are obviously environmental laggards on this issue. The regulation would allow us to address that inequity, in my opinion.

Mr. Miller: What process will you be following to circulate the regulations so that companies that will be affected will be aware that they'll be affected and may want to get input into the act for the forming of the regulations?

Mr. Wilkinson: We would use the Environmental Bill of Rights, as required, where all regulations are posted in advance, and allow comments.

The Chair: Questions and comments?

Mr. Marchese: Two things, Mr. Parliamentary Assistant: As I was reading, it says, "prevent, eliminate or ameliorate any adverse effects." I know this is already currently in law, but I thought it was very difficult to prevent or eliminate an adverse effect. You can ameliorate an adverse effect. Once an adverse effect occurs, you can attempt to ameliorate, but how can you prevent an adverse effect? There's always an effect, and preventing one—unless you do what I was proposing on page 11, which says, "including eliminating the use or production of a contaminant" or "prevent the discharge of a contaminant." It's so difficult to prevent an adverse effect.

Mr. Wilkinson: Mr. Marchese, if I were driving a car and someone jumped out in front of me, the adverse effect would be to hit him, but if I slam on the brakes, I'd prevent that from happening. In a society that is based on

industry, something that we all require to get through the day, the question is, do we eliminate the brakes by just saying, "We're not going to let that happen"? This is the issue we have, that we have to go to that over time.

Mr. Marchese: What if you're driving and you're distracted? It's got nothing to do with the brake. You don't apply the brake and an adverse effect happens. How can you prevent that?

Mr. McMeekin: Then you ameliorate the effect.

Mr. Marchese: You can ameliorate perhaps later.

Mrs. Donna H. Cansfield (Etobicoke Centre): They're two different issues.

Mr. Wilkinson: We'd let the health care system ameliorate the effect.

Mr. Marchese: Do you follow what I'm saying? Can you prevent an adverse effect? How do you know how to prevent an adverse effect? We may not know what adverse effect something might cause, unless we say, "This is a dangerous chemical. We better not put it into the water—no discharge—and eliminate it completely from production." Wouldn't that be the way to do it?

Mr. Wilkinson: I'm just from rural Ontario, but I think if I slam on the brakes, I prevent the effect.

Mr. Marchese: And I'm from the small riding of Trinity-Spadina.

Mr. Wilkinson: Huge people, so I don't think it's rural.

Mr. Marchese: We have no clarity on this, from my point of view. Does any lawyer have a comment on this? Doug or others? Other philosopher types?

Mr. Beecroft: I would think there would be circumstances where if there's a discharge but you act really quickly to deal with the discharge, you can prevent an adverse effect. If you spill a chemical out of your truck and, before it gets into the nearby stream, you clean it up, you may prevent any adverse effect.

Mr. Marchese: And this bill does that, or the amendments do this? That was an interesting point. Is there any other point that the policy people want to make, or is that it? Does the bill achieve that, or the amendments?

Mr. Wilkinson: We believe it does. That's why we're offering the amendment. The question is whether or not you're going to vote for spills prevention contingency plans in this province, Rosario.

Mr. Marchese: I'm not entirely clear whether we achieve it the way that it was explained, but that was a very good explanation, by the way. I suspect that might be—

Interjection.

Mr. Marchese: You'd still agree with me; right? It's complicated.

The Chair: Mr. Hardeman.

Mr. Hardeman: I agree with my esteemed colleague here. It would seem to me that the situation doesn't exist if it's still preventable. With the event we're talking about or the element we're talking about, how can that be? It doesn't come into existence if it's prevented. If you slam down the brakes and you avoid hitting someone, the event never happened. The hitting, the accident, didn't

happen. There's no adverse effect. There's nothing. It has to have been an event to reduce the amount.

Interjections.

The Chair: One at a time, please, and remember to address the Chair, and not each other. Mr. Hardeman has the floor.

Mr. Hardeman: I think it's very clear to me that something that's prevented is not an issue that we need to have legislation to deal with, because it doesn't exist. It didn't happen. You don't need to deal with the hole in the doughnut once you've eaten the doughnut. It doesn't exist.

Mr. Marchese: Isn't that true, policy people?

Mr. Wilkinson: The only way to achieve that utopia would be to ban all doughnuts, Mr. Hardeman.

My point is—and we've made this point—if a company has a pipe that goes directly into the river, where there's a risk that there could be a discharge, and they redirect that pipe through the use of a spills contingency plan to make sure that that went into a lagoon so that it did not actually go into the river, we prevented the adverse effect, which is pouring methyl ethyl ketone into a river. So it went into a lagoon. Now, the lagoon has been adversely affected, but we sure prevented the adverse effect to the river.

So you have to have spills prevention, which is engineering to make sure that spills don't happen by default. Then we also have to have spills contingency, because even in a perfect world, acts of God could create—like when we had the blackout—large discharges of contaminant to the air in the petrochemical valley.

Mr. Marchese: I just wanted to disagree with the parliamentary assistant, including the policy folks who disagree with me, that it's hard to prevent an adverse effect. It's almost impossible to prevent it, in spite of the explanation provided by Doug on this matter.

The second point I wanted to make on this is there's no time frame. Is there a reason why you don't want to include a time frame? I know it's in regulation, and God bless, it might happen before you guys are out. I don't know. Is there a sense of why we don't want a time frame?

Mr. Wilkinson: It's the opinion of the government that regulation is the best way to make sure that we have the posting of any potential regulation on the EBR, make sure that we have public content and make sure that we have a fair and equitable application of any government regulation in this province.

The Chair: Shall the amendment carry? Carried.

On page 19, Mr. Barrett.

Mr. Barrett: Page 19 is a PC motion with respect to jurisdiction.

I move that section 1 of the bill be amended by adding the following subsection:

“(14.1) Subsection 92(1) of the act, as amended by the Statutes of Ontario, 2002, chapter 17, schedule F, table, is amended by adding the following clauses:

“(b.1) the council of the band for each reserve, as defined in the Indian Act (Canada), within the boundaries of which the spill occurred;

“(b.2) the Department of the Environment and the government of Canada.”

Again, what was driving me on this is the issue where—

The Chair: The Chair would like to clarify: You meant to read, “the Department of the Environment of the government of Canada” and not “and the government of Canada.” Correct?

Mr. Barrett: I don't see that here.

1640

The Chair: You said “Department of the Environment and the government of Canada”; you meant “of the government of Canada.”

Mr. Barrett: Yes, there's a typo in this. Sorry about that.

No, I'm sorry. I'm talking about the Department of the Environment.

The Chair: The Department of the Environment “of” the government of Canada.

Mr. Barrett: Yes, the federal—

The Chair: OK.

Mr. Barrett: Environment Canada.

The Chair: When you read it, you said, “and the government of Canada.”

Mr. Barrett: Oh, did I?

The Chair: OK. Just ensuring that you're reading what you meant in your amendment.

Mr. Barrett: Yes, we're referring to Environment Canada in that case.

The Chair: Thank you. Carry on.

Mr. Barrett: I'm not only talking about the St. Clair River. We know that if something gets in the water, it could be on the Michigan side, even though it came from the Ontario side, or I have visions of, say, a US-registered tanker off the tip of Long Point on Lake Erie, which is in Canada.

Again, it's the whole issue of jurisdictional confusion. When spills occur here and there, maybe the fire truck is the first one on the scene. Now that's municipal. The Ministry of the Environment ideally would show up rapidly, along with industry cleanup crews. Maybe later on, Environment Canada would arrive. If it impinged on state of Michigan waters or shoreline—I understand, in speaking with legal counsel on this, that it is just about impossible, within provincial legislation, to have that kind of relationship with, for example, the state of Michigan. I guess there are a number of reasons for that, and we have international joint commissions and other measures. Of course, Michigan has a different system for reporting and detection and what have you.

A number of states actually have very good systems. The Ohio River, for example, touches on a number of states, and I understand they try to work together to get over some of this jurisdictional confusion, when you really maybe have only a matter of hours to remediate what has happened.

This makes reference to Environment Canada, and it also makes reference to native communities. I think of Walpole First Nation. They've taken a beating on some of these spills. I don't know to what extent this consultation involved native communities. I've put this forward to attempt to ensure that there is that kind of coordination. It gets kind of difficult. You've got a provincial Ministry of the Environment, and then on a native reserve you would be dealing with both the federal Department of Indian and Northern Affairs and Environment Canada. So that's the issue that I've raised.

There is evidence in the past of jurisdictional confusion, and regrettably, that could slow down the response to the spill, or it could even slow down the initial notification of the spill. For that reason, I have made this motion.

Mr. Wilkinson: First of all, I want to thank the member for bringing this forward. Again, that whole issue about native reserves was something that was brought up in the IPAT.

This motion, as far as we can see, would amend the spills notification provisions so that (1) if a spill occurs on an Indian reserve, then the local band council must be notified; and (2) the federal Department of the Environment be notified.

I want you to know, Mr. Barrett, that we're not operating in a vacuum here. We have a constitutional issue. The province may not have the constitutional authority to regulate spills that take place on Indian reserves; therefore, there is a risk that this notification provision may not be enforceable. Further, the Canadian Environmental Protection Act already regulates notification when an environmental incident takes place on an Indian reserve under their jurisdiction. The ministry's Spills Action Centre has entered into a memorandum of understanding with Environment Canada that the province will receive notification on behalf of Environment Canada and, in certain circumstances, that Environment Canada will be notified. For instance, if the spill is on reserve land or federal land, then the memorandum of understanding specifies that the Spills Action Centre notify Environment Canada. So it doesn't matter who gets the notice, we make sure the other side knows about it.

The way spills notification works is that notification to the Spills Action Centre in this province is required, and they make a determination of which persons or bodies require notification in the circumstances, such as which drinking water facilities require notification.

Further to your question about our neighbours in the Great Lakes basin, we have memorandums of understanding with our Spills Action Centre and all of our neighbouring states in the Great Lakes basin, because of the great work that has been done with the charter and the International Joint Commission.

I understand your concern, particularly given IPAT. But we fear to tread, as a province, into a federal matter, particularly with sovereign members of our society who are on a federal reserve.

So, though we appreciate the amendment, as a government, we would have to vote it down.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(15.1) Section 92 of the act, as amended by the Statutes of Ontario, 2002, chapter 17, schedule F, table, is amended by adding the following subsection:

"Same

"“(5) The notices required by subsections (1) and (4) shall be given in accordance with any requirements prescribed by the regulations.”"

For my colleagues, this motion will provide authority to make regulations specifying what information persons must report when they are required to notify the ministry of a spill.

We discovered from deputants that six months after a spill, a company could say, "Oh, by the way, we had a spill, so we notified you." This has to go with the fact that if you have a spill, you've got to call us and you've got to say who you are, what you spilled, when it happened and what you are doing. This strikes us as a huge loophole.

We feel that this is very important. I'm sure we would have all-party support on this motion. It's just the right thing to do.

Mr. Hardeman: I just have a question about the timing of it. I agree with you that there has to be a time frame; there has to be a connection between the event and the notification. If we have a time limit and we know that it needs to be quite close to it, why can we not legislate that, as opposed to by regulation? Do you have a need for different time frames for different types of spills?

Mr. Wilkinson: I think the problem we would have is that, as we all know, the legislative process can be somewhat time-consuming. We need to be able to respond. If we put on the EBR, "Here's how we think. This is the information we need," and other people look at it and say, "Hey, you're missing something here," then we need to be able to, by regulation, just repost it and say, "OK, that's what we're going to do. As of this date, that's going to be the notice. You'd better make sure that these are the questions you'll be able to answer when you call us, and, specifically, when you have to call us. It's not going to be six months after the fact because you think that maybe our SWAT team is going to show up and inspect." So that's the nature of this.

I believe that enshrining this in legislation without the ability to change it is not going to allow us to get at this as quickly as possible.

Mr. Marchese: So you're saying there can't be an easy protocol. "It's complicated, and there might have to be some changes, so we really can't work it out yet. We'll have to work it out as we go, because circumstances can vary from place to place." Is that the kind of thing you're talking about?

Mr. Wilkinson: I think the whole issue has to do with the term “forthwith,” which is in those sections, that you have to get to it and do it. You don’t get to decide when you’re going to let us know. That’s what’s happening right now, and that’s what this amendment is all about.

Mr. Marchese: I agree, and because I agree with you, it would seem to me that it would be much simpler to create some protocol that says, “As soon as there’s a spill, you will have to provide the following information.” It seems easy to me, but maybe it’s more complicated than I think.

Mr. Wilkinson: It’s done by regulation. That’s the way to make that protocol happen that we agree on.

1650

Mr. Marchese: So that regulation, when it happens, whenever we institute it, will have some clear protocol at some point about what will have to happen? I’m assuming that’s what you’re saying. You’re probably agreeing with me, except you’re saying, “Yes, but we won’t put it in the bill, because we can’t, for a variety of different complicated reasons, but we will do it through regulation. Then it’ll be clear, because then we’ll have a better sense of what to do.” Is that basically what you’re saying, more or less, give or take?

Mr. Wilkinson: I think we have the legislative authority, but we don’t, unfortunately, have the regulatory authority to get at it. That seems to be the loophole here that has been used, and we’re trying to close that loophole.

Mr. Marchese: But if you have it in the bill, it happens immediately. You don’t need a regulatory authority; your authority comes from the bill. If you include it in the amendment, and then it gets passed as a bill, you’re done. You don’t have to worry about any regulation.

Mr. Wilkinson: But the existing legislation isn’t specific. So we rewrite that and try to be specific and think of all the things that could happen over the next 100 years, or we just give ourselves, by legislation, the regulatory authority to get on this problem, get it posted and get this new system instituted.

Mr. Marchese: I don’t understand. Why is it complicated? There’s a spill, and they immediately have to notify you, or notify the appropriate authorities, and that’s complicated?

Mr. Wilkinson: It’s beyond notification. We have companies that notify us but don’t tell us what it is they spilled.

Mr. Marchese: So why can’t we say “the same day that it happens”? Why can’t we say that?

Mr. Wilkinson: We also need to know what, sir. It isn’t enough to say, “We spilled something,” and “Come on; whenever you feel like it, come and tell us.” We need to know what it is they think went in the water, went in the air, went on the land. We need to know what that is, because there’s a tiered response, obviously. We heard deputations that there were 35,000 spills reported last year, of which 3,900 were considered to be quite serious.

We’re on a basis where we say to people that they have to notify us, but there’s no regulation that we have,

which is what this amendment is all about, to say, “By the way, when you do it, this is what you have to tell us.” I don’t think we need to have a law; I think we need to have the regulatory authority, through this legislation, to make that happen. If we need to amend it, we have the ability to do that. And of course that would go through the EBR process, like everything else in this province.

The Chair: Mr. Hardeman?

Mr. Hardeman: I don’t object; I agree with the parliamentary assistant’s suggestion that you need a protocol of how and when it needs to be done, but I’m a little concerned that it’s strictly in regulatory, that the bill doesn’t deal with it. It needs to be done now. I don’t know what the next Minister of the Environment is going to say. Maybe they think, “In order to make certain groups of people happy, we’re going to give a six-month time frame to do it in.” I think if we’re going to protect our environment, we need to include something in the bill that says, “Immediately, you must report, according to regulations,” as opposed to just saying—

Mr. Marchese: But what do we know?

Mr. Hardeman: Obviously not.

Mr. Wilkinson: Mr. Hardeman, some previous Minister of the Environment proposed a bill that was passed by the Legislature that said that people had to notify, without any specifics as to what, when, who, where and how it happened, and what you are doing about it. It seems to me that that was the legislative oversight that we are fixing by making sure we have the regulatory power in regard to that section. I don’t think we have to go all over to take this out of the bill, try to find another bill and spend months and months and months trying to think of everything that needs to be—all we would do is say, “Oh, and what you have to tell us is going to be prescribed by regulation.” That’s an authority we don’t have. That was a previous Minister of the Environment who came up with that bill; we’re just fixing it right here.

Mr. Marchese: So while we give you this regulatory power, what you’re saying is, once we do that, it won’t take months to establish a protocol because you’ll have the regulatory power. Is that what you’re saying?

Mr. Wilkinson: It’s also my understanding of the law in this province, in regard to environmental law, that if the government is going to post regulation, it has to be posted on the EBR. My understanding is that we could post something within 30 days. I can assure you, as we are maybe two weeks from the end of this session, that there will not be a legislative solution to this regulatory oversight problem that couldn’t be done in 30 days. I think it’s just a quicker way to get to the promised land that we all agree to.

Mr. Marchese: We want to get to it. I’m just assuming that by giving this regulatory power, we’re going to move quickly, because that power will give us the clarity to be able to act as quickly as we can, right?

Mr. Wilkinson: If we don’t, I’m sure you’ll bring it up with my minister.

The Chair: Presumably, we can't reach it unless we decide on the amendment. Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsections 1(16) to (19) of the bill be struck out.

By striking out these sections, I want to tell my colleagues that these provisions of part X will not be altered by the bill; i.e., they will retain the "likely" threshold in these provisions.

The Chair: Discussion?

Mr. Marchese: For the record, I'm voting against.

The Chair: Thank you.

Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(19.1) Subsection 95(1) of the act is amended by striking out 'any duty imposed or order or direction made or given under this part' in the portion before clause (a) and substituting 'the duty imposed by section 93 or an order or direction made or given under this part.'"

For my colleagues, this motion clarifies that the right of entry granted by section 95 applies to the duty to cleanup under section 93. It does not apply to other duties imposed by part X. The government will be voting in favour of this motion.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsections 1(20) to (27) of the bill be struck out.

Again, by striking out these subsections of the bill, these provisions of part X will not be altered by the bill. In other words, we are retaining the "likely" threshold in these provisions. We'll be dealing, obviously, with the next portion.

Mr. Marchese: I'm voting against.

The Chair: Noted.

Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsections 99.1(5) to (7) of the Environmental Protection Act, as set out in subsection 1(28) of the bill, be struck out and the following substituted:

"Joint and several liability

"(5) Where two or more persons are liable to pay costs or expenses pursuant to an order under subsection (1), they are jointly and severally liable to Her Majesty in right of Ontario.

"Contribution and indemnity

"(6) Where the director is entitled to issue an order to two or more persons under subsection (1) in respect of costs or expenses, as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:

"1. Where the director is entitled to issue an order to two or more persons under subsection (1) in respect of

costs or expenses and one or more of them caused or contributed to the costs or expenses by fault or negligence, such one or more of them shall make contribution to and indemnify,

"i. where one person is found at fault or negligent, any other person to whom the director is entitled to issue an order under subsection (1), and

"ii. where two or more persons are found at fault or negligent, each other and any other person to whom the director is entitled to issue an order under subsection (1) in the degree in which each of such two or more persons caused or contributed to the costs or expenses by fault or negligence.

"2. For the purpose of subparagraph 1 ii, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the director is entitled to issue an order under subsection (1) caused or contributed to the costs or expenses, such two or more persons shall be deemed to be equally at fault or negligent.

"3. Where no person to whom the director is entitled to issue an order under subsection (1) caused or contributed to the costs or expenses by fault or negligence, each of the persons to whom the director is entitled to issue an order under subsection (1) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.

"Enforcement of contribution

"(7) The right to contribution or indemnification under subsection (6) may be enforced by action in a court of competent jurisdiction.

"Adding parties

"(8) Wherever it appears that a person not already a party to an action under subsection (7) may be a person to whom the director is entitled to issue an order under subsection (1) in respect of the costs or expenses, the person may be added as a party defendant to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of court for adding third parties."

For clarification for my colleagues, a person responsible for a spill, as defined in part X of the EPA, is jointly and severally liable for expenses in a cost-recovery order. After paying such costs, this motion ensures that such a person can seek contribution and indemnification from any other potentially responsible person. This ensures that the contribution and indemnification rules for a cost-recovery order are consistent with the existing provisions in part X. Again, this makes sure that we have an equitable distribution of the same rights to all parties in these types of matters.

The Chair: Shall the amendment carry? Carried.

1700

Mr. Wilkinson: I move that subsection 100.1(6) of the Environmental Protection Act, as set out in subsection 1(30) of the bill, be amended by striking out "Subsections 99.1(5) to (7)" at the beginning and substituting "Subsections 99.1(5) to (8)."

This motion fixes cross-referencing to the contribution and indemnification provisions that we just dealt with in section 99.1.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(31) of the bill be struck out.

For clarification, this motion will restore the "likely" threshold to the provision dealing with what can be required in a control order.

The Chair: Discussion?

Mr. Marchese: For the record, New Democrats prefer the higher threshold of "may" and will oppose this.

The Chair: So noted. Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(32) of the bill be struck out and the following substituted:

"(32) Clause 132(1)(b) of the act is amended by striking out 'alternate water supplies' and substituting 'temporary or permanent alternate water supplies.'"

This motion will restore the "likely" threshold to this provision, which deals with financial assurance requirements for approvals and orders.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(33) of the bill be struck out and the following substituted:

"(33) Clause 132(1.1)(b) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'alternate water supplies' and substituting 'temporary or permanent alternate water supplies.'"

This deals with returning to the "likely" threshold. This provision deals directly with the financial assurance requirements for property use, which is another part of the EPA.

Mr. Marchese: Mr. Chair, I apologize, but what was the explanation for page 28?

Mr. Wilkinson: For reference, it was one of those "likely" ones, and I'm sure you would have voted against it.

Mr. Marchese: That's right. To correct my record, we prefer "may," which offers a lower threshold rather than the higher one. So I'm opposed to that and opposed to the page 29 amendment.

The Chair: Let's try the voting threshold. Shall the amendment carry? Carried.

Mr. Wilkinson: I move that the French version of subsection 143(1) of the Environmental Protection Act, as set out in subsection 1(34) of the bill, be amended by striking out "d'une décision rendue ou d'un arrêté pris" in the portion before clause (a) and substituting "d'une décision ou d'une ordonnance rendue ou d'un arrêté pris."

Again, this motion is required to make sure that we have conformity between the English text and the French translation.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 145.4(1) of the Environmental Protection Act, as set out in subsection 1(37) of the bill, be amended by striking out "the regulations made under clause 182.1(13)(d) governing the determination of the amounts of administrative penalties by the director" and substituting "the regulations made under clause 182.1(15)(d) governing the determination of the amounts of environmental penalties."

For clarification, this motion removes the term "administrative penalties" from subsection 145.4(1) and replaces it with the term that we are using now, which is "environmental penalties."

The Chair: Discussion? Shall the amendment carry? Carried.

Page 32, Mr. Barrett.

Mr. Barrett: I move that subclause 145.5(1)(b)(i) of the Environmental Protection Act, as set out in subsection 1(37) of the bill, be struck out and the following substituted:

"(i) an order made under section 182.1(1), or"

Maybe legislative counsel could help me on this. I'm assuming this relates to the concern of companies that a senior person would be charged with responsibilities to issue environmental penalties rather than a junior person, an inspector or someone who does site visits. That was the rationale behind that. I know we heard that concern in testimony.

Mr. Wilkinson: I would like to thank the member for offering the amendment, because we agree with you in principle, given what the deputants were telling us. Your motion would remove reference to provincial officer environmental penalty orders. I want you to know that our subsequent government motions that are coming up are removing any reference to authority to issue environmental penalty orders by provincial officers. Specifically, we'll be moving to make sure that they're at the director level or above, as requested by many parties. So we would not be voting in favour of it because we've got a government motion, number 66, that's going to handle all of this.

Mr. Barrett: On page 66, is it?

Mr. Wilkinson: Yes, page 66 is the big one.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Wilkinson: I move that section 145.5 of the Environmental Protection Act, as set out in subsection 1(37) of the bill, be struck out and the following substituted:

"Onus for certain proceedings that relate to discharges
"145.1(1) This section applies to a hearing by the tribunal under this part if,

"(a) the hearing was required by a regulated person;

"(b) the order that is the subject of the hearing is,

"(i) an order made under subsection 182.1(1), or

"(ii) an order made under section 157, an order made under section 157.2 that amends an order made under section 157, or an order made under section 157.3 that confirms or alters an order made under section 157,

unless the contravention in respect of which the order is made is prescribed by the regulations made under section 182.1 as a contravention in respect of which an order may not be issued under subsection 182.1(1); and

“(c) the order that is the subject of the hearing relates to a contravention described in clause 182.1(1)(a).

“Contraventions of section 14

“(2) If this section applies to a hearing and the order that is the subject of the hearing relates to a contravention of section 14, the person who required the hearing has the onus of proving that the discharge of the contaminant into the natural environment did not cause and could not have caused an adverse effect.

“Contraventions of section 93

“(3) If this section applies to a hearing and the order that is the subject of the hearing relates to a contravention of section 93, the person who required the hearing has the onus of proving that,

“(a) the discharge of the pollutant was not abnormal in quality or quantity in light of all the circumstances of the discharge;

“(b) the pollutant that was spilled did not cause and was not likely to cause an adverse effect; or

“(c) forthwith after the pollutant was spilled, the person did everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.

“Contraventions of other discharge provisions.

“(4) If this section applies to a hearing and the order that is the subject of the hearing relates to a discharge into the natural environment in contravention of a provision referred to in subclause 182.1(1)(a)(iii), (iv) or (v), the person who required the hearing has the onus of proving that the person did not contravene the provision.”

I want to share that reverse onus will be retained for specific types of environmental penalty orders and provincial officer orders. This motion amends the section to reflect other motions in relation to the threshold change in the EPA—from “likely” to “may”—and removes any reference to provincial officer environmental penalty orders.

The Chair: For the purpose of clarification, you referred to section 145.1(1) when I believe you meant section 145.5(1).

Mr. Wilkinson: I stand corrected by the Chair. It would take me half an hour to find that, sir.

Mr. McMeekin: I think you should read it all over again.

The Chair: We would need unanimous consent for such a motion. Hearing none, shall the amendment pass? Carried.

1710

Mr. Wilkinson: I move that subsections 150(5) to (7) of the Environmental Protection Act, as set out in subsection 1(39) of the act, be struck out and the following substituted:

“Joint and several liability

“(5) Where two or more persons are liable to pay costs pursuant to an order under subsection (1), (2) or (2.1),

they are jointly and severally liable to Her Majesty in right of Ontario.

“Contribution and indemnity

“(6) Where the director is entitled to issue an order to two or more persons under subsections (1), (2) or (2.1) in respect of costs, as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:

“1. Where the director is entitled to issue an order to two or more persons under subsection (1), (2) or (2.1) in respect of costs and one or more of them caused or contributed to the costs by fault or negligence, such one or more of them shall make contribution to and indemnify,

“i. where one person is found at fault or negligent, any other person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1), and

“ii. where two or more persons are found at fault or negligent, each other and any other person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) in the degree in which each of such two or more persons caused or contributed to the costs by fault or negligence.

“2. For the purpose of subparagraph 1ii, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs, such two or more persons shall be deemed to be equally at fault or negligent.

“3. Where no person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs by fault or negligence, each of the persons to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.

“Enforcement of contribution

“(7) The right to contribution or indemnification under subsection (6) may be enforced by action in a court of competent jurisdiction.

“Adding parties

“(8) Wherever it appears that a person not already a party to an action under subsection (7) may be a person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) in respect of the costs, the person may be added as a party defendant to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of the court for adding third parties.”

This ensures the contribution and indemnification rules for orders to pay costs and the contribution and indemnification provisions in part X have a uniformity of purpose.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(44) of the bill be struck out.

This is in regard to restoring the likely threshold for orders which provincial officers may issue to secure a scene.

Mr. Marchese: The NDP votes against it.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(44.1) Clause 157(1)(b) of the act, as re-enacted by the Statutes of Ontario, 1998, chapter 35, section 16, is repealed and the following substituted:

“(b) a provision of an order under this act, other than an order under section 99.1, 100.1, 150 or 182.1 or an order of a court; or”.

This motion will ensure that provincial officer orders cannot be used to enforce collection of orders that require the payment of money, like environmental penalty orders, or to enforce court orders.

Mr. Marchese: Could you repeat that, John?

Mr. Wilkinson: OK. We'll just back up. This motion will ensure that provincial officer orders—so we have our officers from the ministry—cannot be used to enforce the collection of orders that require the payment of money, like an EP, or to enforce court orders. That should be a matter dealt with by the courts. We should not have our people with the authority to be doing that. That's something, if it comes to those penalties—and there's some disagreement, I would assume—that should go to the court.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(44.2) Section 157 of the act, as re-enacted by the Statutes of Ontario, 1998, chapter 35, section 16 and amended by 2001, chapter 17, section 2, is amended by adding the following subsection:

“‘Contravention of section 14

“(1.1) Subsection (1) does not apply to a contravention of section 14 unless,

“(a) an order to pay an environmental penalty could be issued in respect of the contravention; and

“(b) the contravention involves a discharge that causes or is likely to cause an adverse effect.”

Mr. Marchese: Explanation? Statement?

Mr. Wilkinson: It's the same thing: “likely.” We're just making sure.

The Chair: Just to correct the record, in your reading, under clause (1.1)(a), at the end of that, you said “and,” and I believe you meant “or.”

Mr. Wilkinson: It's “or.”

The Chair: Thank you.

Mr. Wilkinson: You see, that's why we have a Chair. He's right on.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that clause 157(2)(b.1) of the Environmental Protection Act, as set out in subsection 1(45) of the bill, be amended by striking out “a contravention of section 14” and substituting “a contravention

of section 14 for which an order to pay an environmental penalty could be issued.”

For my colleagues, this motion clarifies when a provincial officer's order has to describe the effects or potential effects of the discharge. This only has to be done when an environmental penalty order can be issued. We had discussion about the fact that an order should state what it's about; it shouldn't just come in and say, “Hey, by the way, you have an environmental penalty.” It's required by us to state clearly what it is we're issuing the order for. Again, industry and others came to us and said that this was not clear, and so the motion clarifies our intention.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(46) of the bill be struck out.

This restores the “likely” threshold when provincial officers can order a person to remediate a contamination.

Mr. Marchese: For the record, Marchese's against it.

The Chair: So noted.

Shall the amendment carry? Carried.

Mr. Wilkinson: I move that clause 157(3)(f) of the Environmental Protection Act, as set out in subsection 1(47) of the bill, be amended by striking out “may” and substituting “is likely to”.

Mr. Marchese: Marchese votes against it.

The Chair: So noted.

Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsections 1(51) and (52) of the bill be struck out.

The Chair: Shall the amendment carry?

Mr. Marchese: Marchese votes against it.

The Chair: So noted. Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(53.1) The French version of section 164 of the act is amended by striking out ‘la propriété en l'état où elle’ and substituting ‘le bien en l'état où il’.”

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(54) of the bill be struck out and the following substituted:

“(54) Paragraph 4 of subsection 168.8(3) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out ‘alternate water supplies’ at the end of substituting ‘temporary or permanent alternate water supplies’.”

Mr. Marchese: Explanation again.

Mr. Wilkinson: This motion restores the “likely” threshold for when alternate water supplies can be required under an emergency order issued under part XV.I of the Environmental Protection Act.

Mr. Marchese: So Marchese's voting against it.

Mr. Wilkinson: I would be shocked if you weren't.

The Chair: So noted.

Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(54.1) The French version of clause 168.12(1)(d) of the act, as enacted by the Statutes of Ontario, 2001,

chapter 17, section 2, is amended by striking out 'd'une propriété' and substituting 'd'un bien'."

The Chair: Shall the amendment carry? Carried.
Mr. Wilkinson: I move that subsection 1(55) of the bill be struck out and the following substituted:

"(55) Paragraph 4 of subsection 168.14(4) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'alternate water supplies' at the end and substituting 'temporary or permanent alternate water supplies'."

The Chair: Shall the amendment carry? Carried.
Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(55.1) The French version of clause 168.17(1)(d) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'd'une propriété' and substituting 'd'un bien'."

The Chair: Shall the amendment carry? Carried.
Mr. Wilkinson: I move that subsection 1(56) of the bill be struck out and the following substituted:

"(56) Paragraph 4 of subsection 168.20(5) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'alternate water supplies' at the end and substituting 'temporary or permanent alternate water supplies'."

The Chair: Shall the amendment carry? Carried.
Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(56.1) The French version of clause 168.26(d) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'd'une propriété' and substituting 'd'un bien'."

The Chair: Shall the amendment carry? Carried.
Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(57.1) Subsection 176(1) of the act, as amended by the Statutes of Ontario, 1997, chapter 7, section 4, and 2001, chapter 17, section 2, is amended by adding the following clause:

"(x) governing the development and implementation of plans required under paragraph 7 of subsection 18(1) or section 91.1, including,

"(i) regulations requiring procedures to be followed, including procedures involving public consultation,

"(ii) regulations establishing time limits related to the development and implementation of the plans,

"(iii) regulations governing the contents of the plans, including requirements for provisions relating to updating the plans and testing compliance with the plans."

1720
The motion is complementary to the requirement in the bill for the development and implementation of spill contingency and spill prevention plans. It makes the necessary regulation-making authority.

The Chair: Shall the amendment carry? Carried.
Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(57.2) Clause 176(8)(d) of the act, as amended by the Statutes of Ontario, 2001, chapter 17, section 2, is

amended by striking out 'but no discharge of pollutant or location of discharge shall be designated' and substituting 'but no discharge of pollutant shall be designated'."

The Chair: Shall the amendment carry? Carried.
Mr. Barrett.

Mr. Barrett: This is a PC motion found on page 53.
I move that subsection 182.1(2) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out and the following substituted:

"Application
"(2) Subsection (1) applies to a person if the person is a corporation engaged in a business activity and,

"(a) the business activity is prescribed by the regulations; or

"(b) the corporation holds, is required to hold, or is exempted under this act from the requirement to hold a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act."

Again, my understanding of this motion—and I think it's essentially duplicated by the government motion on page 4?

Mr. Wilkinson: On page 66.

Mr. Barrett: Page 66. OK. Again, as I understand it, the corporation takes responsibility, not an employee or other individual. Any comment on this one?

Mr. Wilkinson: I would say to my friend Mr. Barrett that we agree in principle, but we'll vote against this because we feel that our motion on page 66, which will be read as an omnibus motion, will make sure that we've got all of our cross-references correct in this regard.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett.

Mr. Barrett: Chair, on page 54, you'll find a PC motion. I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

"Contraventions relating to discharges

"(2.1) If a contravention involves the discharge of a contaminant, no order shall be issued under subsection (1) in respect of the contravention unless the discharge causes or is likely to cause an adverse effect."

Again, there are discharges in industry for various reasons, including negligence or faulty equipment. Some discharges—say, if a portion of some ethanol was discharged into Lake Erie—would have less of a deleterious effect on aquatic organisms or fish or aquatic plants than, say, diesel. That's my understanding. Industry were concerned about the definition of a spill. They wanted a more clear, more scientific definition of a spill. That's my understanding of what we're getting at here.

Mr. Wilkinson: Mr. Barrett, in this regard, I will be voting against it. I would be surprised if Mr. Marchese also did not vote against it, because that would apply the "likely" threshold to environmental penalties, and as we've stated clearly, we want the "may" threshold in environmental penalties.

The Chair: Let's once again try the threshold: Shall the amendment carry? I declare the amendment lost.

Mr. Marchese: Mr. Chair, can I ask you a question? Is there a plan here in terms of determining what will happen if we don't finish these amendments by 6 o'clock? Procedurally, can you tell me what the plans are?

The Chair: If it is your will to adjourn at 6, then the clause-by-clause will resume at the next scheduled meeting of the committee.

Mr. Marchese: Oh, is that right? I thought we had only one day. That's great.

Mr. Miller: We have as much time as we want. We could spend days doing this.

Mr. Marchese: Oh, isn't that nice. That wasn't very clear.

Mr. Wilkinson: On behalf of my government colleagues, despite the fact that it's Thursday, I'm sure we'd love to stay and get this out of the way, but we'll just go with the rules.

Mr. Marchese: Thank you, Mr. Chair, for the clarification.

Mr. Miller: Just for clarification on the last portion, number 54, you're keeping "may," the lower threshold, on EPs and not "likely," in all cases?

Mr. Wilkinson: In all cases, yes.

Mr. Miller: There were deputants who came before the committee who spoke against having that. They wanted it changed to "likely," but you didn't think their arguments were worthy?

Mr. Wilkinson: As we mentioned at the beginning, in regard to environmental penalties, which are a civil administrative matter and not a criminal prosecution, it is the contention of the government that "may" is the appropriate threshold to protect the environment and not "likely." It should be "may," and that's our position.

Absolute liability is also part of this, but we'll get to that in a few minutes.

Mr. Barrett: I move that section 182.1 of the Environmental Protection Act, as set out in section 1(58) of the bill, be amended by adding the following subsection:

"Considerations

"(4.1) The director shall consider the following matters in determining the amount of the penalty:

"1. Preventative actions taken by the person who is required to pay the penalty.

"2. The costs of response, abatement and remediation incurred by the person who is required to pay the penalty."

I guess very simply the principle here is that there are—and I think the parliamentary assistant has referred to some companies that do a good job and some that are laggards. I feel it's really counterproductive to administer penalties on a company that is a first-rate company and has done everything to remain in compliance: conducts training, makes the investments in the plant and equipment and does its best to prevent these kinds of things from happening. I would be concerned if they are,

in a sense, penalized for that or are not given credit for that when a spill occurs, perhaps through no fault of an employee or equipment.

Mr. Wilkinson: I think it's an issue where we believe—and you'll see in subsequent amendments that the "must" requirement will be put in by regulation. The advantage of the regulation is that it ensures that that is transparent, open to the public and not left to the sole discretion of the director, where there will be no transparency. That's why we'll be voting against this. I'm sure we all recall how many people came here and asked that this whole process be transparent, and there will be a government motion in that regard shortly.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett: I move that subsection 182.1(6) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Strict liability

"(6) No order shall be issued against a person under subsection (1) if,"

My motion ends here. I can make an assumption that it is the continuation of the previous one. I might ask for some advice.

1730

Mr. Beecroft: If you look at subsection 1(58) of the bill, it sets out this new section 182.1 of the Environmental Protection Act. Going down to subsection (6), the existing words in the bill read, "A requirement that a person pay an environmental penalty applies even if," You're changing that to say, "No order shall be issued ... under subsection (1) if," You're essentially reversing the meaning of this provision. The provision of the bill creates what's called absolute liability, and you're reversing that so that it's not absolute liability.

Mr. Barrett: Thank you for that. I wasn't clear.

Mr. Miller: So this motion, then, would change the definition of "liability" to "strict liability" versus "absolute liability," which of course we heard from many different deputants. If you look at your summary of recommendations to Bill 133 from the various groups, you'll note that under this section, the comments are, "Amend this section to recognize due diligence as a defence. We adamantly oppose absolute liability. Strict liability regimes which allow defences of due diligence encourage companies to put into place responsible environmental practices. Requiring corporations to pay after a spill without affording a defence of due diligence is akin to the imposition of a pollution tax. Due diligence has been the foundation of environmental risk management for the last 25 years."

You'll note that there are approximately 15 various groups that came before the committee and made that recommendation, and that's the purpose of this motion.

Mr. Wilkinson: Just for the record, I can assure you that the government will vote down this motion to a person. The heart of this bill, in regard to civil administrative penalties, is the imposition of absolute liability.

We have heard that over and over again. We looked at all of the US states that have civil administrative penalties. We are going to be swift of foot in this regard. The people demand that we are swift of foot. That is not possible with a strict liability regime. As the minister mentioned, we have done a great deal of research of all the other jurisdictions that have this. This is new for Ontario, but this is not new when it comes to our competitors around the world. We're just getting up to the standards that the good people of Ontario expect, which are environmental penalties and absolute liability.

Mr. Marchese: I just wanted to say that we agree with the Liberals on this one. We support the move to absolute liability and agree with the member when he says it is the backbone of this particular bill: You spill, you pay.

Mr. Miller: I note also that you had groups coming before you saying that due diligence should be a mitigating factor when assessing the value of an environmental penalty. Have you taken that into consideration at all?

Mr. Wilkinson: Well, there will be some other motions from the government in regard to how environmental penalties are assessed—whether they are settlement agreements, whether or not they are posted so that people can see them—and they'll be in subsequent motions.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Marchese, page 57.

Mr. Marchese: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsections:

“Publication before agreement

“(8.1) A proposal to enter into an agreement under subsection (8) is deemed to be a class II proposal for an instrument for the purposes of the Environmental Bill of Rights, 1993, unless the regulations under that act classify the proposal as a class I or III proposal for an instrument.

“Publication after agreement

“(8.2) If an agreement is entered into under subsection (8), the ministry shall publish notice of the agreement in a newspaper having general circulation in the part of Ontario affected by the agreement, setting out the following information:

“1. The name of the person with whom the director or provincial officer entered into the agreement.

“2. A summary of the contents of the agreement.

“3. The reasons that the director or provincial officer entered into the agreement.

“4. The effect of the agreement on the obligation to pay a penalty under this section or on the amount of the penalty.”

This amendment is aimed at ensuring that settlement agreements reached between the director and the corporation regarding an environmental penalty are made public. There is nothing that would prevent us from

agreeing to this, it would seem to me, but I'll hear an argument from the parliamentary assistant, no doubt. What we're saying here is very clear: It should be made public, there is nothing that would prevent any of this information from being made public, and everyone should know the four points that we listed, by way of information they ought to have.

Mr. Wilkinson: I want to state on behalf of the government that we agree in principle on the question of transparency. The only question is, how do we do that? We disagree that the best way to do that is just to publish it once or twice in a local paper. I think that the appropriate place to have this posted is on the Environmental Bill of Rights, where we have a permanent record.

The other advantage of the Environmental Bill of Rights is that the good people of Ontario have the ability to comment on anything posted on the Environmental Bill of Rights, so that they feel that they have the ability to have their voice heard on what we agree to, which is the transparency of settlement agreements. So we would not be voting in favour and will be providing an amendment subsequently about making sure that this stuff gets posted.

Mr. Marchese: I'm not sure what the disagreement is. I'm not sure there's any disagreement that it would be posted on the Environmental Registry established under the Environmental Bill of Rights. You agree with what we have here, except on the how, and then you say that it won't do just to put it once or twice in the newspaper and that we should do it in the form that you expressed. What prevents us from doing both? I don't get it.

Mr. Wilkinson: The best way for the government of Ontario to ensure that that information is publicly disseminated to everyone in Ontario is to post it on the Environmental Bill of Rights. If someone wants to take that public information and put it in the newspaper, wherever it is—I'm sure the Fifth Estate—

Mr. Marchese: Why couldn't we do it? Why can't we do it as well? I don't get it. If somebody wants to do it, why can't we simply prescribe that that be done?

Mr. Wilkinson: Because we're going to put it in one place where everybody can see it, not just one local place. So it seems to me that that is the right thing for the government to do.

Mr. Marchese: And all I'm saying is, why can't we do both, rather than one or the other?

Mr. Wilkinson: Well, if you have the one where everybody gets to see it, then what you want can happen. If we don't put it on the EBR, then it isn't public knowledge. We're going to ensure that it is public knowledge, that people can comment, and if people want to report on that, because it's on the Environmental Bill of Rights, everyone will know that there's one place to go to to make sure that that is available to everybody in the province of Ontario.

Mr. Marchese: Here's the problemo that I'm having with what you're saying. You can make it available and post it on the environmental registry. What you're saying is that everyone will know, because it's there. All we're

saying is that you would include this information and that it be made locally available as well, so that you don't necessarily have to go into that registry to see it, although it might be easy for people to do that, if they want; you're quite right. But if it's posted and we print it out and it's available in that area and people know about it, they're more likely to know about it if it's in a paper or two, once or twice. What I'm saying is, it doesn't detract from one or the other—both are complementary—and you're saying no.

Mr. Wilkinson: That's right. The government will put it on the government Web site, and the fifth estate will report it in the media. We're going to do what we do, and we're going to let the fifth estate do what they do.

Mr. Marchese: I want a recorded vote, please.

The Chair: Recorded vote.

Ayes

Marchese.

Nays

Barrett, Cansfield, Flynn, McMeekin, Miller, Peterson, Wilkinson.

The Chair: I declare the amendment lost.

Mr. Barrett.

Mr. Barrett: Page 59?

The Chair: Page 58.

Mr. Barrett: PC motion on page 58.

I move that subsection 182.1(9) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out.

It's my understanding that this is directed toward the concern over having provincial officers administering penalties. I may not be clear, because I'm relying on the wording.

1740

Mr. Wilkinson: The government appreciates the amendment in principle, but I'm sure that you'll see, when we get to page 66, that we're going to ensure that we will remove the authority for provincial officers to issue environmental penalties. By going with what we have on page 66, we're going to make sure that we keep the legislative integrity of the bill in regard to all of the references so we don't have to have even more amendments than we have right now.

Mr. Miller: So, if I'm clear, this amendment will ensure that environmental penalties would only be imposed by a director—

Mr. Wilkinson: Or above.

Mr. Miller: —or above, not the provincial officer. You're going to have that in your motion on page 66, further along.

Mr. Wilkinson: That's on page 66. But we agree in principle.

The Chair: Shall the amendment carry?

Mrs. Cansfield: Since so many of the amendments are similar to what the government is putting forward, I think that we actually should be putting up our hands, in terms of voting for or against amendments, and not making some assumptions. I just think it would make it clear and helpful for the people who are actually watching this proceeding.

Mr. Marchese: Nobody's watching the proceedings here.

Mrs. Cansfield: But they will be.

Mr. Marchese: If you want a recorded vote, you can ask for one.

Mrs. Cansfield: I'm not asking for a recorded vote. I just think that we should be able to vote without the assumption—

The Chair: If I understand the request correctly, Mrs. Cansfield is asking you to indicate your support or opposition to a vote on an amendment by simply raising your hand.

Mrs. Cansfield: Right. Thank you, Chair.

The Chair: OK. Let's try it again. Shall the amendment on page 58 carry? All those in favour? All those opposed? I declare the amendment lost.

By raising your hand, at least we'll know that you've actually zoned in to the meeting here.

Mr. Barrett: I have a PC amendment on page 59.

I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill be amended by adding the following subsection:

"No admission

"(10.1) If a person pays a penalty imposed under subsection (1) in respect of a contravention, the payment is not, for the purposes of any prosecution in respect of the contravention, an admission that the person committed the contravention."

I think, essentially—and this was coming from a number of delegations—that the payment of an environmental penalty is not considered an admission of guilt and, I'm assuming, is not to be considered something that could be used against someone in court. But I'm not a judge or a lawyer.

Mr. Wilkinson: We don't accept this motion.

Government motions which replace the environmental penalty order sections, which are 182.1 of the EPA and 106.1 of the OWRA, specify that if a person is prosecuted for the same contravention, the payment of a penalty or the entering into a settlement agreement shall not be considered admission of guilt.

The Conservative motion is drafted more broadly, so that the issuance of environmental penalty orders can never be considered by a court, when sentencing a defendant, as part of the defendant's compliance history. At the moment, courts are permitted to consider the issuance of orders as part of the defendant's compliance history. Therefore, the Conservative motion is too broadly drafted and would constrain a sentencing court beyond what it is now permitted to consider.

This would also be inconsistent with the sentencing guidelines introduced by the bill, which are sections

188.1 of the EPA and 110.1 of the OWRA, which will require a sentencing court to consider a defendant's compliance history with environmental protection laws.

As a result, we would vote against this amendment.

Mr. Barrett: Are we meeting partway at all on any of the other 70 amendments on this issue?

Mr. Wilkinson: Yes, in subsequent government motions. But on this one, again, we have all of these other sections which would then have to be amended and renumbered.

Mr. Barrett: We can look forward to that in this package?

Mr. Wilkinson: Yes, subsequently.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

“Repayment

“(10.2) If a person pays a penalty imposed under subsection (1) in respect of a contravention and, in a subsequent prosecution in respect of the contravention, the person is acquitted, the minister shall repay the amount of the penalty to the person.”

Very simply, if you pay a penalty for a certain infraction and you go to court and you're acquitted, you should get your money back. That's probably a very simple way of describing that.

The Chair: The motion proposed by Mr. Barrett is contrary to standing order 56 in that it would, if passed, specifically direct the allocation of public funds. Such a motion may be proposed only by a minister of the crown. The Chair must therefore declare the motion out of order.

Mr. Barrett: The government taketh, but does not return.

Just out of interest, if anyone felt that this is inappropriate—to fine somebody who turns out to be innocent—what measures within the province of Ontario are there for someone to get their money back?

The Chair: The motion having been ruled out of order, we can't entertain discussion on it. However, on page 61, you may introduce your motion there.

Mr. Barrett: I move that clause 182.1(13)(d) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by striking out “and governing the determination of those amounts by provincial officers” in the portion before subclause (i).

Chair, I refer that back to you; you were going to explain that.

The Chair: Comments?

Mr. Wilkinson: I think you were clarifying that 60 was out of order, so we couldn't discuss it any more, and now we're on 61. I can tell you again that we agree with the motion in principle, because we are saying that these things have to be done at the director level or above and not by provincial officers. That will be on page 66. We appreciate the amendment, but we'll be voting against it. We'll deal with it in 66.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

Mr. Barrett: I move that clause 182.1(13)(g) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out.

At this point, I'd like to ask legislative counsel for advice on this.

Mr. Beecroft: Clause 182.1(13)(g) is the power to make regulations prescribing circumstances in which a provincial officer may exercise the authority of the director to issue these environmental penalties. So you're proposing to strike out the reference to the provincial officer.

Mr. Wilkinson: Again, Mr. Barrett, we won't be able to accept this amendment, but we do agree in principle, because it goes to the issue of making sure at the director level, which we'll be at too on page 66.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

1750

Mr. Marchese: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

“Annual report

“(16) The minister shall, not later than March 31 in each year, publish a report that sets out the following information for each contravention in respect of which an order was made under this section during the previous year:

“1. The name of the person against whom the order was made.

“2. The amount of the penalty.

“3. A description of the contravention.

“4. An indication of whether an agreement was entered into under subsection (8) in respect of the order and, if an agreement was entered into, the effect of the agreement on the obligation to pay the penalty or on the amount of the penalty.”

I think it's self-explanatory. We think an annual report is necessary to pull all the information together for the purposes of evaluating the performance of environmental penalties. It's done in many, many other sectors that report to the government, and I am hoping and convinced that the Liberals will support this one.

Mr. Wilkinson: First of all, I would like to thank the member for Trinity-Spadina for moving this motion. We will accept it. I've had a nice chat with legislative counsel. My understanding is that if you would be prepared, after we deal with government motion 66—I believe legislative counsel could help you prepare to reintroduce this after page 66.

Mr. Marchese: I'll stand it down.

Mr. Wilkinson: That's great. Thank you. We'll be accepting it.

Mr. Marchese: I appreciate what the member's trying to do, but I would like to move this amendment because I wanted to oppose many of the amendments that are in 66. I understand they might want to defeat mine and

hopefully they will incorporate it in their own motion on page 66.

Mr. Wilkinson: Just so there's clarity, we appreciate the amendment and we will be adding it to the page 66 amendment.

If I might, Mr. Chairman, for the member from Trinity-Spadina, in regard to NDP motion 64, we will do that as written as well.

Mr. Marchese: The same logic will apply. I've got it.

Mr. Wilkinson: As written.

Mr. Marchese: Very good. I'll read it, yes.

Mr. Wilkinson: OK?

Mr. Marchese: That's fine.

The Chair: Shall the amendment carry?

Mr. Wilkinson: I thought it was withdrawn.

The Chair: We're discussing the amendment on page 63.

Mr. Wilkinson: I guess we have to defeat it, but then we're going to—

Mr. Marchese: That's right.

The Chair: So discussing the NDP amendment on page 63, shall the amendment carry? I declare the amendment lost.

Mr. McMeekin: Can I suggest a procedural motion? As members will recall, the House leaders met on Monday to determine that this committee would meet in an extraordinary session in order to consider the bill and the clause-by-clause discussion. So I'd like to move before 6—because I understand there may be some urgency to leave at 6—that this committee respectfully request that the House leaders meet to consider agreeing to meet again on Monday, May 30, to continue the discussion around the clause-by-clause issues. We would need the House leaders to do that, as I understand.

The Chair: So your motion is that the committee request the House leaders to meet to consider adding a meeting date of May 30.

Mr. McMeekin: Yes.

Mr. Barrett: I certainly concur that there is a need for more time. Usually the dates are set in a subcommittee meeting. The House leaders aren't going to be sitting here. I'm just trying to check my calendar. Is there a mechanism for us to determine whether that date is appropriate?

Mr. Wilkinson: I think that we have to leave it to the House leaders. Their job is to get volunteers. I know I'll be here.

Mr. Barrett: So it doesn't require a subcommittee meeting?

The Chair: If the full committee is here and it agrees to the recommendation, then there wouldn't be a need, procedurally, to reconvene the subcommittee to confirm what the entire committee has already agreed to.

Mr. Marchese: That's right. If there's agreement between us all here, we could do it without requiring the House leaders to meet. I have no problem with that, if the members agree.

Mr. Barrett: I just have a scheduling question. What was the date, again?

Mr. McMeekin: Monday, May 30.

The Chair: All those in favour of the motion? All those opposed? I declare the motion carried.

Mr. McMeekin: Let it be recorded that it was carried without a dissenting vote. I think that might be helpful to the House leaders.

The Chair: Let it be recorded that the motion was carried without a dissenting vote.

Mr. Barrett: With one abstention; I'm still looking at my BlackBerry to see what I'm doing that day.

Mr. Marchese: Mr. Chair, do we have time for one more motion?

The Chair: Go ahead and do motion number 64. You get the last word, unless you're really quick. We might be able to do another one, too.

Mr. Marchese: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

“Five-year review

“(17) At least once every five years, the minister shall cause a report to be prepared and published on the operation of this section, including the effect of this section on prosecutions under this act and including recommendations on the contraventions to which and circumstances in which orders should be issued under subsection (1).”

This amendment calls for the environmental penalties section of the Environmental Protection Act to be reviewed once every five years in order to evaluate the performance of this instrument for preventing spills and its application and administration by the Ministry of the Environment. It would provide an analysis of the effect, if any, that the use of environmental penalties has on the number and nature of prosecutions by the Ministry of the Environment under the act.

Finally, it would seem to me that any sound policy instrument, like environmental penalties, should simply, as a matter of course, be exposed to a review every five years to ensure that it's satisfying its objective.

I think it's a great motion.

Mr. Wilkinson: Just for the record, as we mentioned before, the government will be voting down the motion, but we'll be introducing it as an addition to the motions contained on page 66 and throughout, just so that we get the numbers of all of these things correct for legislative posterity. We appreciate the amendment from the third party.

The Chair: Shall the amendment carry? All those in favour? All those opposed? I declare the amendment lost.

It is now 6 o'clock, and the time prescribed for this committee to meet has expired. I declare this meeting adjourned.

The committee adjourned at 1800.

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Monday 30 May 2005

Journal des débats (Hansard)

Lundi 30 mai 2005

Standing committee on the Legislative Assembly

**Environmental Enforcement
Statute Law Amendment Act,
2005**

Comité permanent de l'Assemblée législative

**Loi de 2005 modifiant des lois
sur l'environnement
en ce qui concerne l'exécution**



**Chair: Bob Delaney
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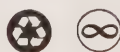
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Monday 30 May 2005

Lundi 30 mai 2005

*The committee met at 1556 in room 228.*ENVIRONMENTAL ENFORCEMENT
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
SUR L'ENVIRONNEMENT
EN CE QUI CONCERNE L'EXÉCUTION

Consideration of Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters / Projet de loi 133, Loi modifiant la Loi sur la protection de l'environnement et la Loi sur les ressources en eau de l'Ontario en ce qui a trait à l'exécution et à d'autres questions.

The Chair (Mr. Bob Delaney): Good afternoon, and welcome back after our constituency week. This is the standing committee on the Legislative Assembly. We're here to consider Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters, at the stage of the always gripping clause-by-clause.

Are there amendments?

Mr. Norm Miller (Parry Sound-Muskoka): On a point of order, Mr. Chairman: Just for clarity, and I was speaking prior to this meeting with the parliamentary assistant, I understand there have been some new amendments that have been made a part of our package. I'm just wondering, from the parliamentary assistant, how many new amendments there are. It seems a little unfair to get them just as we're arriving at the meeting, when no one in our party has actually seen these amendments yet.

Mr. John Wilkinson (Perth-Middlesex): There are two very large government amendments on pages 66 and 111. You'll recall that, in regard to NDP motions that were on pages 63 and 64, just before we broke, the NDP were nice enough to agree to withdraw those and allow us, because they deal with section 25, to incorporate those into one motion so that from a legislative counsel point of view, the numbering of the amendment makes sense. So we've done that.

As well, there is a two-word amendment, which I'll discuss, to what was found in government number 77, in regard to consistency in our position about "may" to "likely." Everything that's in 66, which is the EPA, also has to be dealt with at 111, in regard to the OWRA. As far as we can see, it's just going to make it a bit easier for

legislative counsel for us to give them the whole—if we're going to read it, we might as well read in the section correctly, and do it just once. It will also incorporate the great suggestions from the Conservative caucus on the amendment.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): I haven't seen these yet. Have these changes been sent out to the environmental community? Have they been sent out to industry or other stakeholders? Has anyone seen these? I haven't seen these.

Mr. Wilkinson: My understanding is that clause-by-clause is the purview of the committee.

Mr. Rosario Marchese (Trinity-Spadina): He's just about to read the amendment. Is that correct? Is that what I missed?

The Chair: At the moment, we're about to consider the amendment on page 65. The amendment being discussed here, I think, is the next one or the one after. Correct?

Mr. Wilkinson: That's the big one, yes.

The Chair: OK. Let's try again. Amendments?

Mr. Barrett.

Mr. Barrett: There is a PC motion on page 65. This amendment has not been changed or rewritten. This stands as of a week and a half ago when first submitted.

I move that sections 182.2 and 182.3 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out.

The reason for this is to ensure that only Ministry of Environment directors are involved and have the ability and are authorized to issue environmental penalties. It ties in with and is to ensure consideration for due diligence and that evidence of guilt be taken into account at the director level or at a higher level. We feel there's a positive as well: It would avoid having field staff acting as police, prosecutor or judge in a situation where, if that occurred, we believe it would undermine any modicum of co-operative interaction between ministry staff and an organization where they feel there's a problem occurring.

The Chair: Discussion?

Mr. Wilkinson: We appreciate the amendment and the spirit of the amendment from the opposition. We'll be dealing with it in a more comprehensive manner in the next government motion, because we want to be absolutely clear, since we agree, about where the new government motion will remove any reference to authority to issue environmental penalty orders by provincial officers.

We agree; we just want to make sure it goes right through all of section 25. We were afraid that there were a couple of references that were missing there.

The Chair: Shall the amendment carry?

Those in favour? Opposed? I declare the amendment lost.

Mr. Wilkinson: Mr. Chair, before I begin amendment 66, just for clarity for our colleagues today, this motion, lengthy as it is, will do the following:

(1) Environmental penalty orders will only be issued by directors, not provincial officers.

(2) The orders must be issued against the company and not company officials.

(3) Provide specific circumstances when an EP order shall not be issued.

(4) Clarify that absolute liability does not apply to prosecutions.

(5) Provide that the payment of an EP order is not an admission of guilt if the person is prosecuted for the same contravention.

(6) Place specific restrictions on regulation-making authority for penalty assessments to provide persons with the ability to seek reductions for the steps they take to prevent and mitigate the effects of a contravention and for environmental management systems they have in place.

(7) Settlement agreements must be posted on the Environmental Bill of Rights registry, and the regulations can require public consultation before agreements are entered into.

(8) This revised motion—and this is where we get into the revisions—also incorporates the two NDP motions that required annual reports and five-year reviews of the environmental penalty regime in regard to subsections (19) and (20).

(9) This revised motion also gives the regulated person entitlement to a reduction if they can demonstrate that they took the prescribed mitigative or preventive measures.

I move that sections 182.1, 182.2 and 182.3 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out and the following substituted:

“Environmental penalties

“182.1(1) Subject to regulations, the director may issue an order requiring a regulated person to pay a penalty if,

“(a) the regulated person contravenes,

“(i) section 14,

“(ii) section 93,

“(iii) a provision of the regulations that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment,

“(iv) a provision of an order under this act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentra-

tion or level of anything that may be discharged to the natural environment,

“(v) a provision of a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment; or

“(b) the regulated person contravenes a provision, other than a provision referred to in clause (a), of,

“(i) this act or the regulations,

“(ii) an order under this act, other than an order under section 99.1, 100.1 or 150 or an order of a court,

“(iii) a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act,

“(iv) a report under section 29, or

“(v) an agreement under subsection (9).

“Exceptions

“(2) Subsection (1) does not apply to,

“(a) a contravention of section 14, if,

“(i) neither this act nor the Ontario Water Resources Act requires the regulated person to notify the ministry of the discharge to which the contravention relates, or

“(ii) the discharge to which the contravention relates was authorized under this act or the Ontario Water Resources Act; or

“(b) a contravention of section 184.

“Contents of order

“(3) The order shall be served on the person who is required to pay the penalty and shall,

“(a) contain a description of the contravention to which the order relates, including, where appropriate, the date and location of the contravention;

“(b) in the case of a contravention of section 14, contain a description of the adverse effects that were caused by or that may be caused by the contravention;

“(c) specify the amount of the penalty;

“(d) give particulars respecting the time for paying the penalty and the manner of payment; and

“(e) provide information to the person as to the person's rights under section 140.

“Amount

“(4) The amount of the penalty shall be determined in accordance with the regulations.

“Maximum penalty

“(5) The amount of the penalty shall not exceed \$100,000 for each day or part of a day on which the contravention occurred or continued.

“Absolute liability

“(6) A requirement that a person pay an environmental penalty applies even if,

“(a) the person took all reasonable steps to prevent the contravention; or

“(b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

“Same

“(7) For greater certainty, nothing in subsection (6) affects the prosecution of an offence.

“Limitation

“(8) An order requiring payment of an environmental penalty shall be served not later than the first anniversary of the later of the following dates:

“1. The date the contravention occurred.

“2. The date on which the evidence of the contravention first came to the attention of the director or a provincial officer.

“Agreements

“(9) The director and a person against whom an order may be or has been made under subsection (1) may enter into an agreement that,

“(a) identifies the contravention in respect of which the order may be or has been made;

“(b) requires the person against whom the order may be or has been made to take steps specified in the agreement within the time specified in the agreement; and

“(c) provides that the obligation to pay the penalty may be cancelled in accordance with the regulations or the amount of the penalty may be reduced in accordance with the regulations.

“Publication of agreements

“(10) The ministry shall publish every agreement entered into under subsection (9) in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993.

“Penalty does not prevent prosecution

“(11) A person may be charged, prosecuted and convicted of an offence under this act in respect of a contravention referred to in subsection (1) even if an environmental penalty has been imposed on or paid by the person or another person in respect of the contravention.

“No admission

“(12) If a person pays a penalty imposed under subsection (1) in respect of a contravention or enters into an agreement under subsection (9) in respect of a contravention, the payment or entering into of the agreement is not, for the purposes of any prosecution in respect of the contravention, an admission that the person committed the contravention.

“Failure to pay when required

“(13) If a person who is required to pay an environmental penalty fails to comply with the requirement,

“(a) the order or decision that requires the payment may be filed with a local registrar of the Superior Court of Justice and may be enforced as if it were an order of the court;

“(b) the director may by order suspend any certificate of approval, provisional certificate of approval, licence or permit that has been issued to the person under this act until the environmental penalty is paid; and

“(c) the director may refuse to issue any certificate of approval, provisional certificate of approval, licence or permit to the person under this act until the environmental penalty is paid.

“Same

“(14) Section 129 of the Courts of Justice Act applies in respect of an order or decision filed with the Superior Court of Justice under subsection (13) and, for that purpose, the date on which the order or decision is filed under subsection (13) shall be deemed to be the date of the order that is referred to in section 129 of the Courts of Justice Act.

“Regulations

“(15) The Lieutenant Governor in Council may make regulations,

“(a) specifying the form and content of orders under subsection (1);

“(b) specifying types of contraventions or circumstances in respect of which an order may be issued under subsection (1);

“(c) requiring and governing public consultation before an agreement is entered into under subsection (9) and, subject to that subsection and to any regulations made under subclause (d)(iv), governing the contents of agreements under that subsection;

“(d) governing the determination of the amounts of environmental penalties, including,

“(i) prescribing criteria to be considered in the exercise of any discretion,

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“(ii) providing that the total amount of the penalty for a contravention that occurs or continues for more than one day not exceed a maximum prescribed by the regulations,

“(iii) providing for different amounts depending on when an environmental penalty is paid,

“(iv) with respect to agreements under subsection (9), governing the cancellation of the obligation to pay an environmental penalty or the reduction of the amount of an environmental penalty;

“(e) prescribing circumstances in which a person is not required to pay an environmental penalty;

“(f) prescribing procedures related to environmental penalties;

“(g) respecting any other matter necessary for the administration of a system of penalties provided for by this section.

“General or particular

“(16) A regulation under subsection (15) may be general or particular in its application.

“Regulations governing determination of amounts

“(17) The regulations made under clause (15)(d) must, with respect to a contravention referred to in clause (1)(a), provide for the following matters:

“1. The person who is required to pay the penalty must be entitled,

“i. to seek and obtain a reduction in the amount of the penalty if the person took steps prescribed by the regulations to prevent the contravention in respect of which the penalty is imposed, and

“ii. to seek and obtain a reduction in the amount of the penalty if the person took steps prescribed by the

regulations to mitigate the effects of the contravention in respect of which the penalty is imposed.

"2. The determination of the amount of the penalty must take into account factors prescribed by the regulations that relate to the seriousness of the contravention in respect of which the penalty is imposed.

"3. If the director is of the opinion that, as a result of the contravention in respect of which the penalty is imposed, a monetary benefit prescribed by the regulations was acquired by the person who is required to pay the penalty, the amount of the benefit must be considered in determining the amount of the penalty.

"Environmental management systems

"(18) The regulations made under clause (15)(d) must provide for a reduction in the amount of an environmental penalty if, at the time the contravention to which the penalty rates occurred, the person who is required to pay the penalty had in place an environmental management system required by the regulations.

"Annual report

"(19) The minister shall, not later than March 31 in each year, publish a report that sets out the following information for each contravention in respect of which an order was made under this section during the previous year:

"1. The name of the person against whom the order was made.

"2. The amount of the penalty.

"3. A description of the contravention.

"4. An indication of whether an agreement was entered into under subsection (9) in respect of the order and, if an agreement was entered into, the effect of the agreement on the obligation to pay the penalty or on the amount of the penalty.

"Five-year review

"(20) At least once every five years, the minister shall cause a report to be prepared and published on the operation of this act, including the effect of this section on prosecutions under this act and including recommendations on the contraventions to which and circumstances in which orders should be issued under subsection (1).

"Application

"(21) This section does not apply to contraventions that occurred before this section came into force."

The Chair: Just so that the Chair may clarify, in your reading of the amendment, clause 15(b), line 2, you read "an order may be issued"; don't you mean "may not be issued"?

Mr. Wilkinson: Yes, thank you, Mr. Chair. I see you're eagle-eyed, Mr. Chair. Again, for clarity, "specifying types of contraventions or circumstances in respect of which an order may not be issued under subsection (1)."

The Chair: Two more to go. On the last page, subsection (18), in the last line, you said, "had in place an environmental management system required by the regulations." Did you mean "specified by the regulations"?

Mr. Wilkinson: Yes, I did.

The Chair: And toward the end of the page, subsection (20), line 2, "prepared and published on the operation of this act," I take it that means "this section."

Mr. Wilkinson: Yes, "this section."

The Chair: OK. Discussion?

Mr. Miller: Certainly this is a rather large amendment, but just for a little clarity, I know we had representatives who came before the committee and were concerned about "may" versus "likely," and I gather from this amendment that you've gone with the threshold of "may" in terms of environmental penalties in terms of spills or possible spills so that, if I read this correctly, even if there's no spill, someone could be charged. It says, "including a limit of zero." Other language used: "or that may be caused by the contravention."

Maybe you can expand on that for me. I would think that any company doing any business in the province of Ontario may spill something at some time. I would assume that means an environmental officer or director can charge any company in the province, because they "may" cause a spill. Am I correct in that?

Mr. Wilkinson: I know it was late the other day when we got together. We were very clear and clarified for the industries involved, because they came here, and said, "If what you're doing is within your certificate of approval from the ministry, then you will not have an environmental penalty." So, first of all, we have to set that context, because there was a concern about whether or not the certificates themselves could be circumvented at the whim of the ministry. That's the first thing.

The second thing is that for a company to operate in this province, particularly in the MISA sector, they have a certificate of approval specifically telling them what things can be released into the natural environment. Anything a company does that is not approved is something that we have a great deal of concern about, which is why this bill is, I argue, broad, and gives that power. But the great environmental stewards that we have—and soon all companies will be great environmental stewards because of environmental penalties—have restrictions as to what it is they are allowed to do. If they're doing something they're not allowed to do and damaging the natural environment, then "they spill, they pay."

Mr. Miller: So help me understand how it's going to make Ontario cleaner if you have a MISA-regulated company that is taking all reasonable steps to try to prevent a spill—because in your section on absolute liability, it basically says that it doesn't matter whether you took reasonable steps or took precautions to prevent a spill. Say you're a MISA-regulated company—I'm trying to think of a circumstance—with a pump pumping out of a body of water, and it malfunctions and spills a small amount of oil into the water. I assume that with this, that company could be charged with an environmental penalty.

Mr. Wilkinson: Exactly, Mr. Miller. What we're talking about here in regard to civil administrative penalties—not prosecutions but this civil matter—is that it is absolute liability; it's not strict liability. If there is

something that's coming out of your factory that's not supposed to be coming out, you are responsible for it.

Mr. Miller: So even though they took all precautions, even though nothing that they could have done could have prevented this spill, they're still going to be charged with an environmental penalty. I'm wondering how this is going to make Ontario cleaner, if they've done everything they could do to prevent the spill anyway. We've heard from a lot of presenters who said—and your own report, which said that we should be concentrating on working with companies and trying to prevent spills and having spill prevention and pollution prevention plans. How does this make Ontario any cleaner?

Mr. Wilkinson: We're applying the same logic that your government used in regard to wheels coming off trucks. If a wheel comes off a truck in this province, you pay a penalty. If that wheel kills somebody, by the way, you're also going to be prosecuted. But if the wheel comes off the truck, you're charged. You don't have a defence of, "Well, I didn't mean for the wheel to come off the truck." Obviously the person driving the truck doesn't want the wheels to come off, but if they come off, it's a public hazard, and therefore you pay a penalty. That was brought in—wisely, I thought—by the previous government. I think everyone agrees to that. You don't get to say, "I didn't mean for that to happen." The question is, there shouldn't be wheels coming off of trucks in this province, and if it does happen, you are held responsible.

Mr. Miller: Through the Chair, I would say that that comparison is a little different. In the case of wheels falling off trucks, there were some negligent truck operators around, and I think those rules and changes were meant to catch some of those negligent truck operators.

I'm thinking of an instance where a resort neighbouring to Muskoka, where I live, was trying to comply—I realize it's not a MISA company—with the new drinking water regulations ahead of time, and being very responsible. They spent a quarter of a million dollars putting a new water system in, which it turns out they don't need now because the rules have changed. But they spent a quarter of a million dollars, they put a new water system in, and part of that new water system was a pump at the lake to pump water up to higher ground, where the new filtration centre was going to be making the drinking water for this resort cleaner. In the first year of operating with all this new equipment, part of the backwash system failed and pumped one litre of oil into the lake. I could see that scenario happening with a company that is a MISA company, where the company is trying to do everything they can. They wouldn't change their actions, whether this law is in place or not; they're going to end up with a fine or a penalty. I really wonder what's being accomplished.

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Mr. Wilkinson: I say to the member, your concern is addressed by section 17, which says that we will definitely take into account the reasonable actions taken by that company either to prevent or mitigate the release.

Mr. Miller: So you're saying, just so I'm clear, that they'll get the penalty, but then after the fact their due diligence might be taken into account to reduce the amount of the penalty or lessen the penalty that they've paid because they've been shown to be good corporate citizens that have always been trying to do the best job and not pollute the environment.

Mr. Wilkinson: That's right. They have that right under section 17. I think that is the balance we've tried to strike there.

The Chair: Mr. Barrett and then Mr. Marchese.

Mr. Barrett: Just to back up a bit, this amendment is seven pages long, and I know the original on page 66 was a number of pages long as well.

Mr. Marchese: Do you think it's just a little too long?

Mr. Barrett: I think it's a little too long, but I am concerned. We have 123 pages of amendments, and I have a basic concern that things have gotten a bit out of hand. I've had phone calls from stakeholders that are having difficulty understanding where this is going, or they're not sure whether their input has been taken into consideration. That's fine, but they quite honestly don't understand a lot of these amendments, and I'm just concerned that we've gotten so far off course with this legislation. I say that quite honestly. I'm very concerned.

Mr. Marchese: Mr. Parliamentary Assistant, we thank you for including some of our amendments on the annual report and the five-year review. You see, from time to time government can throw a few crumbs away to the other side. It's important to do that every now and then.

The other question I have is on page 70 of the old document, under "Regulations": "The Lieutenant Governor in Council may make regulations..." Parliamentary Assistant, do you feel good with that language?

Mr. Wilkinson: Yes, I do.

Mr. Marchese: You do. And under what circumstances might the Lieutenant Governor in Council make regulations as they relate to the items that are listed below? Item six is one example.

Mr. Wilkinson: You're dealing with number—

Mr. Marchese: "Regulations," on page 70 of the old document.

Mr. Wilkinson: I think we're going to go with the ones that I actually read in, as opposed to the old ones. The new ones I think might be clearer for all of us today. I see (15) divided into (a) through (g), but I don't see a reference to six.

Mr. Marchese: It's 15(c), "requiring and governing public consultation." Under what circumstances might the Lieutenant Governor in Council decide to make regulations as it relates to (c)?

Mr. Wilkinson: I would not speculate on the future intentions of the government.

Mr. Marchese: And you feel good to let the government have free rein to decide under what circumstances it may or may not have regulations respecting that or other items?

Mr. Wilkinson: Absolutely, because this has been done in a democratic process. It's what we're here for.

Mr. Marchese: I hear that; I understand that. I'm referring to the language of "may." You see, for parliamentarians, "may" means that it probably won't happen, generally speaking, unless, if pushed by the public, the government might decide to pass a regulation dealing with that. They may have consultations if pressed by someone. Otherwise, my suspicion is that your government simply won't enact that regulation because it's "may." It's designed to make some people feel good, but it doesn't really do anything because it's not "shall." You understand the difference, right? But you feel OK as a government member with that language. I thought you would.

Mr. Wilkinson: Absolutely.

Mr. Marchese: I just don't feel good with that. When I was in another committee dealing with issues having to do with people with disabilities, "may" appeared in so many places. Part of my making fun of your government was that it probably won't happen. In so many instances the government dealt with the issue of, "The minister may appoint a body or the minister may tell this body to do so and so," but it may not, and it's not likely to unless you spell it out. That's my opposition to your point and disagreement with your feeling good about the language that has been given to you to feel good about.

I don't like the use of the word "may." I know it's intended for things not to happen; otherwise it would have been "shall." I just wanted to tell you that I disagree with that section and feel strongly about it, and we're going to vote against that particular part. That's one thing.

The other is, do I understand you correctly that the directors and officers will not be liable now for the amendments you made here in this section?

Mr. Wilkinson: Individuals will not be subject to environmental penalties. In other words, for the people who work for a company, it will be to the company.

Mr. Marchese: OK. Those individuals refer to officers and directors as well. Is that what you mean?

Mr. Wilkinson: Yes.

Mr. Marchese: In the old act, you deemed that it was important to make directors and officers liable, and now you've changed your mind.

Mr. Wilkinson: We've heard from stakeholders. We've heard from both unions and industry that they had serious concerns, and we wanted to make sure that individuals felt that they, in not having a personal liability, would then make sure they did the right thing and reported the spill without fear that they themselves would be subjected to an environmental penalty. That doesn't mean that they may not be prosecuted if they've been negligent.

Mr. Marchese: Right. But I don't recall the unions saying "directors and officers." I think unions—the ones I heard, at least—talked about individual employees, but I don't think they made reference to directors and officers. Do you have a different recollection of what the unions said?

Mr. Wilkinson: We're treating all individuals the same, and for clarity making it the company.

Mr. Marchese: And do you think they're all individuals in the company: officers and directors and regular employees?

Mr. Wilkinson: It's the company that has the certificate of approval from our ministry as to whether or not they can do whatever they're doing, so that's whom we are dealing with. I agree with the stakeholders who came to us and said it was important to do that.

Mr. Marchese: So you feel good with the changes you're making.

Mr. Wilkinson: Oh, yes, very.

Mr. Marchese: It's so good to have a soldier.

Mr. Wilkinson: I think the glass is half full. You think it's half empty; I'm one who believes it's half full.

Mr. Marchese: Yes, I know. Of course.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Three quarters full.

The Chair: Just to remind the members, let's flow the discussion through the Chair.

Mr. Marchese: I just want to say that I agreed with the wording of old bill, personally, that you had introduced versus the amendments you're making. And that's it.

The Chair: Thank you. Mr. Barrett, you had a comment.

Mr. Barrett: The reason I asked to be recognized is that I wish to put forward a motion. I am aware that I did put forward a motion—

The Chair: Are you proposing an amendment to this motion?

Mr. Barrett: No. This is more on process. It really derives from comments I just finished making about the number of amendments and the direction we're heading in.

The Chair: The debate at the moment is on this particular amendment. Are you proposing an amendment to this amendment?

Mr. Barrett: No. I'm making a motion on process.

The Chair: OK. Can we dispose of this particular amendment? Then the Chair will recognize your motion.

Mr. Barrett: OK.

The Chair: Shall the amendment carry? Carried.

Mr. Barrett, you have a motion.

Mr. Barrett: Thank you, Chair. I do wish to put forward a motion. I have given a copy of the motion to our clerk and I will quote from the motion.

Bill 133 is now so far off course, it needs to be scrapped and a fresh start made to get it right. There have been so many amendments proposed, over 70 from the government alone, in such a short time frame that it's difficult to assess whether the amendments will truly address the fundamental flaws contained in Bill 133. I urge the government and this committee to find a way to recommend to the ministry to immediately begin working on effective spills prevention legislation using the sound work of IPAT and stakeholder consultations as a foundation.

I've titled the motion "Withdraw and rewrite Bill 133."

1630

The Chair: One moment.

Mr. Barrett, the preamble to your motion is, by definition, out of order. Your motion itself, contained in the second paragraph, is in order. Discussion?

Mr. Wilkinson: We're prepared to vote.

The Chair: Shall the motion carry? All those in favour? All those opposed? I declare the motion lost.

Further amendments?

Mr. Barrett: There is a PC motion on page 72. Is that the correct page?

The Chair: Yes.

Mr. Barrett: I move that subsection 182.4(3) of the Environmental Protection Act, as set out in subsection 1(59) of the bill, be struck out and the following substituted:

"Payments out of account

"(3) If money is deposited in the account referred to in subsection (1), the Minister of the Environment may direct that money be paid out of the account to compensate persons for response, abatement and remediation costs incurred with respect to contraventions of this act or the Ontario Water Resources Act."

By way of discussion, I know that much of the direction for this came from the government's advisory committee, the IPAT report. In particular, with respect to the St. Clair River, the downstream communities were not recouping the full cost of spills. There was concern that these communities bear the cost of spills—something as obvious as providing bottled water, for example, to their communities when drinking water intakes must be closed. There seems to be a history where these communities seem to receive little, if any, revenue generated by fines or other fees. So I do know the minister's advisory committee was hoping that the minister or the ministry would find a way to work with the judicial system to find ways of resolving these concerns. That's the reason for this motion.

The Chair: Comments?

Mr. Wilkinson: It's interesting. We agree in principle about the fact of compensating communities. What you just said, Mr. Barrett, was about helping communities, which is what the government bill does, but in your amendment, you talk about giving money to persons—in other words, individuals—and we disagree with that. We actually agree with the IPAT recommendation about the money being used for communities and not compensating directly to individuals, which, in my definition, would be a person. So we'll be voting against your amendment.

Mr. Barrett: I have to admit, in this wording of "person," I think a corporation, legally, can be classified as a person. Maybe I'd better get some advice on that.

Mr. Doug Beecroft: Yes. A corporation is a person.

Mr. Barrett: So I wasn't thinking of, say, one guy downstream. I wasn't thinking of one individual. I was thinking of non-governmental organizations.

Mr. Wilkinson: But individuals are persons, too, and therefore it's too broad. That's why the bill discusses

communities, because that has always been the intention, in my opinion, of the IPAT report.

Mr. Barrett: So I guess an individual, a person, say, living on their own piece of property on the river would have to resort to a lawsuit, then? Is that how they would have to do that?

Mr. Wilkinson: People always have the right to sue in this province anyway, whether or not we have Bill 133; that's the first thing. The second thing is that we are very clear about taking the IPAT report and specifically helping communities, to compensate them directly through the use of environmental penalties for those who have incurred extraordinary costs because someone else upstream has hurt them.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

Mr. Wilkinson: On page 73, I move that section 1 of the bill be amended by adding the following subsection:

"(59.1) Section 186 of the act, as amended by the Statutes of Ontario, 1998, chapter 35, section 36, 2001, chapter 9, schedule G, section 5 and 2001, chapter 17, section 2, is amended by adding the following subsection:

"Exception

"“(1.1) Subsection (1) does not apply to a contravention of section 14 unless the contravention causes or is likely to cause an adverse effect.”"

Again, this is another thing where we're making sure that, for prosecution, the definition is "likely."

Mr. Marchese: For the record, I'm opposed to it.

The Chair: Thank you.

Mr. Marchese: You're welcome.

The Chair: Further discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(59.2) Subsection 186(2) of the act is amended by striking out 'under section 150' and substituting 'under section 99.1, 100.1, 150 or 182.1.'"

This motion will ensure that there is no prospect that a person can face prosecution for the failure to pay an environmental penalty or a cost recovery order. It ensures appropriate separation between prosecutions and the civil process, and that only civil collections methods will be used. It makes sure that when we're dealing with a civil matter, it's a civil matter, and our criminal matters are criminal.

Mr. Miller: Just a clarification. In your explanation, you said no "person." What do you mean by "person" in that description?

Mr. Wilkinson: The person, in the broadest legal sense, who receives an environmental penalty. Of course, under our amendment at 66, we've defined what a person is in the bill, which is restricted to corporations.

The Chair: Shall the amendment carry?

Mr. Barrett: In way of discussion, then—

The Chair: Sorry. Mr. Barrett?

Mr. Barrett: This legislation, then, would actually have two separate definitions for the word "person"?

Mr. Wilkinson: No. A “person” is defined legally, but I just mentioned previously that an individual is also a person.

Mr. Barrett: But not in this case.

Mr. Wilkinson: Well, in the other case, we want to make sure that we’re being specific about a community. I think your amendment, though we agree, was poorly drafted, because it wasn’t clear that you meant “community.”

Mr. Barrett: I’m not going to suggest that this is poorly drafted, but I just find it confusing.

The Chair: Shall the amendment carry? All those in favour? Opposed? Carried.

Mr. Wilkinson: I move that subparagraphs 1 i, ii and iii and subsection 187(3) of the Environmental Protection Act, as set out in subsection 1(61) of the bill, be struck out and the following substituted:

“i. contravening section 14 or 15,

“ii. contravening section 27, 40 or 41 in respect of hauled liquid industrial waste or hazardous waste as designated in the regulations relating to Part V,

“iii. contravening section 92 or 184, or.”

This motion will make the failure to notify the ministry of a spill under section 92 or a discharge under section 15 a second-tier offence.

The Chair: Discussion?

Mr. Marchese: So the failure to notify—

The Chair: Mr. Miller first.

Mr. Miller: Can you just expand on what this second tier means, please?

Mr. Marchese: Great; that’s what I was asking.

Mr. Wilkinson: It would be easier if my friend from the ministry explains that, because it has to do with the fact that we have tiers.

The Chair: Please start by identifying yourself for Hansard.

Mr. Stephen Carty: Stephen Carty, Ministry of the Environment. In the penalty section of the act—and I use “penalties,” this time meaning charges in the court, not penalties in terms of environmental penalties—we use the terms “tier 1” and “tier 2,” but there are really two levels of offences when you’re charged in court. What’s usually referred to as tier 1 would be the more minor type of offences, and tier 2 would be the more serious type of offences like spills and discharges. So this motion is to put “failure to notify” into the second tier, which are more serious offences.

Mr. Miller: And it applies to—

Mr. Wilkinson: Prosecutions.

Mr. Miller: Sorry, what businesses? It applies to all liquid industrial waste? Does it apply to sewage handlers, for example, or only for MISA companies?

Mr. Carty: Here we’re talking about prosecutions and not environmental penalties, so you can put aside what we’ve been talking about in terms of MISA and the types of companies subject to EPs. This is for any person who may be charged with an offence in court.

You were listing the sections there, so section 14 was discharges, sections 27, 40 and 41 were hauled liquid,

industrial waste. Anyone subject to those sections would be in this tier of offences.

1640

Mr. Miller: And this is for prosecutions, not environmental penalties.

Mr. Carty: Right, yes.

The Chair: Further questions and comments?

Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 188.1(6) of the Environmental Protection Act, as set out in subsection 1(63) of the bill, be amended by striking out “may consider the order” and substituting “shall consider the order.”

This motion will require a court to consider the payment of an environmental penalty as a mitigating factor when determining the sentence for that same contravention.

The Chair: Discussion?

Mr. Miller: If a company has had an environmental penalty charge—fine; whatever you want to call it—that shall be taken into consideration?

Mr. Wilkinson: If they’re subsequently prosecuted and now they’re going to have to pay a fine as prescribed by the court, then the court shall take this into account. Again, from stakeholders—

Mr. Miller: They’d probably be supportive of it.

Mr. Marchese: Mr. Parliamentary Assistant, you must have been persuaded by the deputants who came before us that this would be something that would be helpful, that they shouldn’t be burdened twice with penalties. Is that the idea? We don’t have to worry about this affecting the issue of deterrence in any way, because the bill is still very tough, according to you. Is that the idea?

Mr. Wilkinson: I don’t consider this to be watering down the bill in any way, Mr. Marchese. We’ve been listening to stakeholders from all sides on this issue for six months. It is our job, particularly at first reading, to try to strike a proper balance. As far as we’re concerned, as we look into this, what companies are now going to have in this province, which is in every state in the United States, is civil administrative penalties. They’re just going to have to get used to the fact that they have absolute liability. They’ll be glad to know our insurance friends say that their insurance rates will go down because they’re going to have to do a better job.

Again, we want to make sure that at the end of the day a company, if they’re being prosecuted and they’ve been found guilty and they have to pay a fee, that the broadest consideration will be given by the judge, looking at all of the facts in the record.

Mr. Marchese: No, I understand that. It’s just that the original draft didn’t have this, and now you feel, after hearing people, that you’ve achieved a balance, according to you.

Mr. Wilkinson: Yes.

Mr. Marchese: That’s very good, John. We just don’t support that. I just wanted to hear you on the record to see whether or not you had been persuaded by the

persuasive arguments made by people or whether it's a typical Liberal thing, to achieve balance, that kind of thing.

Mr. Wilkinson: I would say that it would be a Liberal thing to achieve balance, Mr. Marchese.

Mr. Marchese: OK. Thanks, John.

Mr. Miller: I notice on this section from our submissions that there were also submissions asking that the amount of fines should be reduced by the amount of money a company has spent on abatement or remediation. Is that being taken into consideration at all with your amendments?

Mr. Wilkinson: Again, we're looking at a company that, let alone received an environmental penalty because something that shouldn't happen happened, it was so grievous that the ministry actually charged them, we successfully prosecuted them and now they're before the court, who has already determined that the company is guilty and is going to look at what should be the monetary fine that they should have to pay. We're making sure that the courts have all of the information available to them as they make that determination. I would leave it up to the judge to decide.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: Have we distributed the revised 77?

Interjection.

Mr. Wilkinson: OK. Just give us one moment. As I mentioned earlier, there are three government amendments that were retyped. As that's being distributed, I'll just talk about what the motion does before I read it in.

This motion will reduce the scope of the duty of corporate officers and directors from the duties specified in Bill 133 so that it focuses on contraventions of a serious nature.

This revised motion also adds a subsection to the motion that the government filed in relation to subsection 194(1) of the EPA on May 17. This subsection clarifies that, in relation to a corporate officer and director's duty to comply with section 14 of the EPA, they fail that duty if the discharge causes or is likely to cause an adverse effect.

In other words, they are not being held to the "may" threshold, but only the "likely" threshold. This is consistent with the government policy that in a prosecution, a person not be subject to the "may" threshold for a section 14 contravention. It ensures that section 14 remains one of strict liability as opposed to environmental penalties, which are absolute liability. The government apologizes for not having the clarity there at our first run at this number 77 on May 17.

I move that subsection 194(1) of the Environmental Protection Act, as set out in subsection 1(69) of the bill, be struck out and the following substituted:

"Duty of director or officer

"(1) Every director or officer of a corporation has a duty to take all reasonable care to prevent the corporation from,

"(a) discharging or causing or permitting the discharge of a contaminant, in contravention of,

"(i) this act or the regulations, or

"(ii) a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act;

"(b) failing to notify the ministry of a discharge or a contaminant, in contravention of,

"(i) this act or the regulations, or

"(ii) a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act;

"(c) contravening section 27, 40 or 41 in respect of hauled liquid industrial waste or hazardous waste as designated in the regulations relating to part V;

"(d) contravening section 93 or 184;

"(e) failing to install, maintain, operate, replace or alter any equipment or other thing, in contravention of a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act; or

"contravening an order under this act, other than an order under section 99.1, 100.1, 150 or 182.1.

"Contraventions of section 14

"(1.1) Clause (1)(a) does not apply to a contravention of section 14 unless the contravention causes or is likely to cause an adverse effect."

The Chair: Just for clarification, the second-last clause should be clause (f); correct?

Mr. Wilkinson: I meant "(f)." Thank you, Chair.

Mr. Marchese: I just want to say for the record that the language that was in the bill had stronger provisions that made directors and officers responsible for preventing any contravention. This obviously provides exceptions or, to put it differently, excludes some of those provisions, which in our view weakens this bill. I just wanted to, for the record, say that I don't support this amendment.

The Chair: Thank you. Shall the amendment carry? Carried.

Page 79.

Mr. Wilkinson: I move that subsection 194(2.1) of the Environmental Protection Act, as set out in subsection 1(70) of the bill, be struck out and the following substituted:

"Onus

"(2.1) If a director or officer of a corporation is charged with an offence under subsection (2) in connection with a specific contravention of the corporation, the director or officer has the onus, in the trial of the offence, of providing that he or she carried out the duty under subsection (1) in connection with that contravention."

This motion clarifies that in a prosecution the crown has the onus of showing that the corporation committed a contravention before the onus shifts to the corporate officer or director to show that they took all reasonable care. That seems to me to be self-evident.

The Chair: Just as a point of clarification, in the second-last line that should be "proving" and not "providing."

Mr. Wilkinson: "Proving," yes.

The Chair: Thank you. Discussion? Shall the amendment carry? All those in favour? All those opposed? Carried.

Shall section 1, as amended, carry? Carried.

Mr. Wilkinson: Perhaps I'd better have a coffee. I don't think I was making as many errors the other day.

I move that the definition of "environmental penalty" in subsection 1(1) of the Ontario Water Resources Act, as set out in subsection 2(1) of the bill, be amended by striking out "under sections 106.1, 106.2 or 106.3" at the end and substituting "under section 106.1."

This motion removes reference to sections of the Ontario Water Resources Act that deal with provincial officer environmental penalty orders, and I would add that I'd be more than happy to withdraw this if we move forward on PC motion 81.

1650

Mr. Barrett: If that makes the committee business flow a little more smoothly, that's fine.

Mr. Wilkinson: Mr. Chair, I withdraw number 80.

The Chair: It is withdrawn.

Mr. Barrett?

Mr. Barrett: There is a PC motion on page 81.

I move that the definition of "environmental penalty" in subsection 1(1) of the Ontario Water Resources Act, as set out in subsection 2(1) of the bill, be amended by striking out "under section 106.1, 106.2 or 106.3" at the end and substituting "under section 106.1."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 2 of the bill be amended by adding the following subsection:

"(1.1) Subsection 1(1) of the act, as amended by the Statutes of Ontario, 1992, chapter 23, section 39, 1993, chapter 23, section 73, 1998, chapter 35, section 44, 2000, chapter 22, section 2, 2000, chapter 26, schedule E, section 5, 2000, chapter 26, schedule F, section 13, 2001, chapter 9, schedule G, section 6, 2001, chapter 17, section 5 and 2002, chapter 17, schedule F, table, is amended by adding the following definition:

""regulated person" means,

""(a) a person who belongs to a class of persons prescribed by the regulations and who holds or is required to hold,

""(i) an approval, licence or permit under this act, or

""(ii) a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under the Environmental Protection Act, or

""(b) a corporation that belongs to a class of corporations prescribed by the regulations'."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that clauses 1(3)(d) and (e) of the Ontario Water Resources Act, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

""(d) a scientific test that is generally accepted as a test of aquatic toxicity indicates that the material or derivative, in diluted or undiluted form, is toxic;

""(e) peer-reviewed scientific publications indicate that the material or derivative causes injury to or interference with organisms that are dependent on aquatic ecosystems; or."

For my colleagues, this motion clarifies the wording of two clauses in the OWRA's deemed impairment provision by including requirements for aquatic toxicity tests and for peer-reviewed scientific publication when making determinations of impairment.

The Chair: Comments?

Mr. Marchese: Thanks for that clarification.

A material must be toxic and not simply cause injury or interference with any living organism—is that the point? If it causes injury, too bad, so sad; it has to be scientifically proven to be toxic, right?

Mr. Wilkinson: In section 2(2), we have (a), (b) and (c). But in (d) and (e), what's being amended is adding in the need to ensure that we have scientific rigour in regard to what it is that we're doing.

Mr. Marchese: I understand. But some things can cause injury and not be toxic.

Mr. Wilkinson: That's right. If I drink too much water, it can kill me, even though water is not toxic.

Mr. Marchese: If it can't be proven to be toxic but it causes injury, too bad. Is that the effect of this change?

Mr. Wilkinson: No. What we're doing is ensuring that scientific rigour can be applied to the process.

Mr. Marchese: Yes, I know that. I understand scientific rigour. I asked you a different question. It has nothing to do with scientific rigour. You can only get redress for this if it is scientifically shown to be toxic. That's what you're saying, right? If there are other side effects and you're injured in so many other different ways, if the product is not toxic, then it's not a problemo?

Mr. Wilkinson: With due respect, we're not amending (a), (b), (c) or those clauses that are subsequent to (e). In other words, we're not looking at it in total.

Mr. Marchese: But if some staff person could answer that question for me, that would be helpful. Is my question relevant? Is my question relevant?

Mr. Carty: I'm Stephen Carty, Ministry of the Environment. As Mr. Wilkinson said, if you were to look at subclauses (a), (b) and (c), they do talk about injury to living organisms. The point of (d) and (e) that you see here was to add aquatic toxicity, but that is not the only test of deemed impairment when you look at the whole definition. Injury is included in (a) and (b) in the original bill.

Mr. Marchese: Thank you.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 2 of the bill be amended by adding the following subsection:

""(3.1) Clause 16(1)(b) of the act, as re-enacted by the Statutes of Ontario, 1998, chapter 35, section 49, is repealed and the following substituted:

""(b) a provision of an order, notice, direction, requirement or report made under this act, other than an order under section 84 or 106.1 or an order of a court; or."

This motion will ensure that provincial officer orders cannot be used to enforce collection of orders that require the payment of money like environmental penalty orders, or to enforce court orders. Again, this is concurrent with what we just agreed to in regard to section 1.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: On page 85: I move that clause 16(2)(b.1) of the Ontario Water Resources Act, as set out in subsection 2(4) of the bill, be amended by striking out "a contravention of section 30" and substituting "a contravention of subsection 30(1) for which an order to pay an environmental penalty could be issued."

This motion clarifies when a provincial officer's order has to describe the effects or potential effects of the discharge. This only has to be done when an environmental penalty order can be issued. Again, it's similar to what we were doing with the EPA.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that clause 16(3)(g) of the Ontario Water Resources Act, as set out in subsection 2(5) of the bill, be amended by striking out "may" and substituting "is likely to."

This motion restores the "likely" threshold for when a provincial officer can order a person to provide alternate water supplies.

Mr. Marchese: For the record, Marchese is opposed to that threshold change.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 2 of the bill be amended by adding the following subsection:

"(8.1) The French version of section 23 of the act is amended by striking out "la propriété en l'état où elle" and substituting "le bien en l'état où il."

Of course, this motion is necessary, as we discussed earlier, to ensure that the French translation meshes correctly with the English text of the legislation.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsections 84(5) to (7) of the Ontario Water Resources Act, as set out in subsection 2(10) of the bill, be struck out and the following substituted:

"Joint and several liability

"(5) Where two or more persons are liable to pay costs pursuant to an order under subsection (1), (2) or (2.1), they are jointly and severally liable to Her Majesty in right of Ontario.

"Contribution and indemnity

"(6) Where the director is entitled to issue an order to two or more persons under subsection (1), (2) or (2.1) in respect of costs, as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:

"1. Where the director is entitled to issue an order to two or more persons under subsection (1), (2) or (2.1) in respect of costs and one or more of them caused or contributed to the costs by fault or negligence, such one or more of them shall make contribution to and indemnify,

"i. where one person is found at fault or negligent, any other person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1), and

"ii. where two or more persons are found at fault or negligent, each other and any other person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) in the degree in which each of such two or more persons caused or contributed to the costs by fault or negligence.

"2. For the purpose of subparagraph 1 ii, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs, such two or more persons shall be deemed to be equally at fault or negligent.

"3. Where no person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs by fault or negligence, each of the persons to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.

"Enforcement of contribution

"(7) The right to contribution or indemnification under subsection (6) may be enforced by action in a court of competent jurisdiction.

"Adding parties

"(8) Wherever it appears that a person not already a party to an action under subsection (7) may be a person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) in respect of the costs, the person may be added as a party defendant to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of court for adding third parties."

This is congruent with what we did under the EPA.

1700

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that paragraph 4 of subsection 89.3(3) of the Ontario Water Resources Act, as set out in subsection 2(12) of the bill, be amended by striking out "may" and substituting "is likely to".

Mr. Marchese: I'm opposed.

The Chair: Thank you. Shall the amendment carry? Carried.

Mr. Wilkinson: I move that paragraph 4 of subsection 89.8(4) of the Ontario Water Resources Act, as set out in subsection 2(13) of the bill, be amended by striking out "may" and substituting "is likely to."

Mr. Marchese: I'm opposed.

The Chair: Thank you. Shall the amendment carry? Carried.

Mr. Wilkinson: I move that paragraph 4 of subsection 89.12(5) of the Ontario Water Resources Act, as set out in subsection 2(14) of the bill, be amended by striking out "may" and substituting "is likely to".

Mr. Marchese: I'm opposed.

The Chair: Thank you. Shall the amendment carry? Carried.

Mr. Wilkinson: I move that the French version of subsection 102(1) of the Ontario Water Resources Act, as set out in subsection 2(21) of the bill, be amended by striking out "ou d'une décision rendue" in the portion before clause (a) and substituting "ou d'une décision ou d'une ordonnance rendue."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 102.1(1) of the Ontario Water Resources Act, as set out in subsection 2(23) of the bill, be amended by striking out "the regulations made under clause 106.1(13)(d) governing the determination of the amounts of administrative penalties by the director" and substituting "the regulations made under clause 106.1(15)(d) governing the determination of the amounts of environmental penalties."

This motion replaces the term "administrative penalties" with "environmental penalties," as we did earlier under the EPA.

The Chair: Shall the amendment carry? Carried.

Mr. Barrett: There's a PC motion on page 95.

I move that subclause 102.2(1)(b)(i) of the Ontario Water Resources Act, as set out in subsection 2(23) of the bill, be struck out and the following substituted:

"(i) an order made under subsection 106.1(1), or."

This is actually one of a series of motions referring to the recommendation that only directors issue penalties. Only someone at the director level or higher should be authorized to issue environmental penalties.

Mr. Wilkinson: We thank the opposition for the motion. We can assure you that under government 111, what you want to do will be incorporated in that rather large and lengthy amendment; therefore, we'll be voting against.

The Chair: Shall the amendment carry? All those in favour? Those opposed? I declare the amendment lost.

Mr. Wilkinson: I move that section 102.2 of the Ontario Water Resources Act, as set out in subsection 2(23) of the bill, be struck out and the following substituted:

"Onus for certain proceedings that relate to discharges
"102.2(1) This section applies to a hearing by the tribunal under section 100 if,

"(a) the hearing was required by a regulated person;

"(b) the order that is the subject of the hearing is,

"(i) an order made under subsection 106.1(1), or

"(ii) an order made under section 16, an order made under section 16.3 that amends an order made under section 16, or an order made under section 16.4 that confirms or alters an order made under section 16, unless the contravention in respect of which the order is made is prescribed by the regulations made under section 106.1 as a contravention in respect of which an order may not be issued under subsection 106.1(1); and

"(c) the order that is the subject of the hearing relates to a contravention described in clause 106.1(1)(a).

"Contraventions of subsection 30(1)

"(2) If this section applies to a hearing and the order that is the subject of the hearing relates to a contravention of subsection 30(1), the person who required the hearing has the onus of proving that the material that was discharged into the natural environment is not material that may impair the quality of the water of any waters in the manner described in the order.

"Contraventions of other discharge provisions

"(3) If this section applies to a hearing and the order that is the subject of the hearing relates to a discharge into the natural environment in contravention of a provision referred to in subclause 106.1(1)(a)(ii), (iii) or (iv), the person who required the hearing has the onus of proving that the person did not contravene the provision."

This motion removes the reference to provincial officer environmental penalty order provisions in the bill, and also uses the new language of "regulated person."

The Chair: Shall the amendment carry? Carried.

Mr. Barrett: This is a PC motion on page 98.

I move that subsection 106.1(2) of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be struck out and the following substituted:

"Application

"(2) Subsection (1) applies to a person if the person is a corporation engaged in a business activity and,

"(a) the business activity is prescribed by the regulations; or

"(b) the corporation holds, is required to hold or is exempted under this act from the requirement to hold a licence, permit or approval under this act."

The purpose of this amendment is to ensure that only corporations are issued penalties, not employees, directors of the company or others who are not a corporation that has a responsibility and derives a profit from the activity that's going on there.

Mr. Wilkinson: With respect, we believe that government motion 111 looks after this, and it ensures that it's not officially a corporation.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett: The committee will find a PC motion on page 99. I move that section 106.1 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by adding the following subsection:

"Contraventions relating to discharges

"(2.1) If a contravention involves the discharge of material into water, no order shall be issued under subsection (1) in respect of the contravention unless the discharge impairs the quality of the water."

Again, an amendment for specificity, to better clarify just what the definition of a spill is in this legislation, bearing in mind that this is a ministry that has to make decisions based on scientific evidence and fact.

The Chair: Comments?

Mr. Wilkinson: We feel that that would actually gut the bill by removing the "may" provision on environmental penalties in regard to the OWRA, so we'd be voting against the motion.

The Chair: Shall the amendment carry? All those in favour? Those opposed? I declare the amendment lost.

Mr. Barrett: The committee will find a PC motion on page 100.

I move that section 106.1 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by adding the following subsection:

“Considerations

“(4.1) The director shall consider the following matters in determining the amount of the penalty:

“1. Preventative actions taken by the person who is required to pay the penalty.

“2. The costs of response, abatement and remediation incurred by the person who is required to pay the penalty.”

The reason for this is to ensure that an organization that has conducted itself in a proper way and has indicated due diligence would essentially be allowed to be rewarded for that. The spirit of this is to encourage companies to continue to practise due diligence.

1710

Mr. Wilkinson: We agree with the spirit of the motion, but we believe that the amendment, as worded, by making the legislative change—this matter is better settled by regulation, which allows input from stakeholders prior to the regulation, and that very public process that we have in this province with regard to the environmental registry.

The Chair: Shall the amendment carry? All those in favour? Those opposed? I declare the amendment lost.

Mr. Barrett: The committee will find a PC motion on page 101.

I move that subsection 106.1(6) of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

“Strict liability

“(6) No order shall be issued against a person under subsection (1) if.”

Again, this reflects the feedback I’ve received and the widespread concern about the loss of due diligence as a defence.

The Chair: Comments?

Mr. Wilkinson: The government will vote against this because it would actually gut the bill, as we said earlier, by imposing strict liability rather than absolute liability in regard to environmental penalties. It’s the government’s contention that if you spill, you pay.

Mr. Miller: Could the parliamentary assistant explain how using the “may” threshold makes sense? Particularly in the real world, where there may be personalities involved, how does using this “may” threshold, where there is actually no spill but may be a spill—justify that for me, if you don’t mind.

Mr. Wilkinson: Mr. Miller, there will not be an environmental penalty issued if there isn’t a spill. We’ve been very clear about that, and as you saw in government motion number 66 and you’ll see again in government motion 111, what is required is that that environmental

penalty has to lay out in English or French exactly what the government says happened, when it happened and what is involved. The whole principle here is swiftness of foot. If this happens and we want to impose an environmental penalty and we have strict liability, and therefore it becomes a legal issue as to whether or not there are mitigating factors, then we will not be able to deal with the spill—you pay right away—when you drag this through the courts for three or four years.

Mr. Miller: But you could actually have a fine even if there’s been no—

Mr. Wilkinson: The person can then go to the Environmental Review Tribunal—swiftly, not later on. They can go back and say, “Wait a minute, we didn’t do this. The ministry says we did this. We didn’t do this.” But then it falls on the company to say—because it’s their pipe, for example, going into the river—that it didn’t come out. The company is in the best position to be able to prove, in regard to a civil administrative matter, whether something happened. We can assure you that in regard to a criminal prosecution, the onus would fall on the government or on the crown to make their case.

The Chair: Shall the amendment carry? All those in favour? All those opposed? I declare the amendment lost.

Mr. Marchese: I move that section 106.1 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by adding the following subsections:

“Publication before agreement

“(8.1) A proposal to enter into an agreement under subsection (8) is deemed to be a class II proposal for an instrument for the purposes of the Environmental Bill of Rights, 1993, unless the regulations under that act classify the proposal as a class I or III proposal for an instrument.

“Publication after agreement

“(8.2) if an agreement is entered into under subsection (8), the ministry shall publish notice of the agreement in a newspaper having general circulation in the part of Ontario affected by the agreement, setting out the following information:

“1. The name of the person with whom the director or provincial officer entered into the agreement.

“2. A summary of the contents of the agreement.

“3. The reasons that the director or provincial officer entered into the agreement.

“4. The effect of the agreement on the obligation to pay a penalty under this section or on the amount of the penalty.”

I just wanted to say by way of argument that while I recognize that the government has introduced half of this amendment into a previous motion, the other is not there, and the one that is not there is “Publication before agreement,” which stipulates that we would make sure that any settlement agreement reached between the director and the corporation regarding any penalty is made public. Subsection (8.1) would make certain that there would be public consultation before the settlement

agreement becomes law. The government has simply introduced an amendment that would say that the Lieutenant Governor in Council "may" make regulations. That's the only difference. My point is that the government will never have publication-before-agreement discussions; it just won't happen. The government can say what it likes, but that's my contention, and that's why we think the motion before us would be stronger than the government's amendment that has been made earlier on.

The Chair: Comments?

Mr. Miller: I'd just like ask Mr. Marchese if he has shares in some provincial newspapers and that's why he's requiring publication in newspapers for this provision, or why just being published on the Environmental Bill of Rights or other means wouldn't satisfy him.

Mr. Marchese: It's just that this would simply force a public consultation in advance of settlement agreements becoming law. That's all it says. Rather than simply saying, "We're publishing it like this," we're simply saying that a meeting and/or a consultation ought to happen in public so that the public would have an opportunity to offer its input. That's the difference between what we're proposing and what you're suggesting.

Mr. Miller: If I'm correct in reading this, you're also requiring publication in a newspaper after an agreement, which I believe is different from the government—

Mr. Marchese: Right, and the government agrees with us on this, in terms of the changes it made on their own document, page 70, under "Regulations."

Mr. Miller: To the parliamentary assistant: Previously you said that the Environmental Bill of Rights was sufficient publicity. Are you now agreeing with the NDP that newspaper advertisement is required?

Mr. Wilkinson: We'll be voting against the motion, because, as we went over in regard to section 1 of the bill, we feel that the proper place for all of this to be public is a place that's accessible to all the people of Ontario, not just the local community where the infraction takes place. Though I understand that my friend from Trinity-Spadina is much more pessimistic than I am, I am an eternal optimist.

Mr. Marchese: I know. That's what happens when you're in government.

The Chair: Shall the amendment carry? All those in favour? All those opposed? I declare the amendment lost.

Mr. Barrett: The committee will find a PC motion on page 103.

I move that subsection 106.1(9) of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be struck out.

Again, this is another in a long line of motions ensuring that penalties are only issued by directors or someone at the director level or higher.

1720

The Chair: Discussion?

Mr. Wilkinson: We'd vote against. We agree in principle, but we believe that government motion 111 will cover this and make sure that there is clarification in how the bill is drafted.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

Mr. Barrett: Page 104 is a PC motion.

I move that section 106.1 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by adding the following subsection:

"No admission

"(10.1) If a person pays a penalty imposed under subsection (1) in respect of a contravention, the payment is not, for the purposes of any prosecution in respect of the contravention, an admission that the person committed the contravention."

Again, it gets into this issue of being hit twice—I think this would refer to the term "double jeopardy"—and the concern that if a company is administered an environmental penalty and is subsequently also charged under either the Environmental Protection Act or the Ontario Water Resources Act, it's this concept of being penalized twice for the same infraction.

The Chair: Discussion?

Mr. Wilkinson: We appreciate the amendment from the opposition, and we agree in principle, but we'll deal with this in government motion 111.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

Mr. Barrett: The committee will find a PC motion on page 105.

I move that section 106.1 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by adding the following subsection:

"Repayment

"(10.2) If a person pays a penalty imposed under subsection (1) in respect of a contravention and, in a subsequent prosecution in respect of the contravention, the person is acquitted, the minister shall repay the amount of the penalty to the person."

Again, very simply, if one is found not guilty subsequently, you should get your money back.

The Chair: The motion proposed by Mr. Barrett is contrary to standing order 56, in that it would, if passed, specifically direct the allocation of public funds. Such a motion may be proposed only by a minister of the crown. I must therefore rule the motion out of order.

Mr. Barrett: Page 106 is a PC motion.

I move that clause 106.1(13)(d) of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by striking out "and governing the determination of those amounts by provincial officers" in the portion before subclause (i).

Again, this is yet another amendment to ensure that only staff at the director level or above issue these penalties.

The Chair: Discussion?

Mr. Wilkinson: I thank the opposition, but we'll vote against it, in favour of government motion 111, which keeps things more clear.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

Mr. Barrett: This is a PC motion on page 107.

I move that clause 106.1(13)(g) of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be struck out.

This is, yet again, an amendment with respect to the importance of having a director or someone senior administer these penalties.

The Chair: Comments?

Mr. Wilkinson: It will be the same: We agree in principle, and we'll deal with it in 111.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Marchese: I move that section 106.1 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be amended by adding the following subsection:

"Annual report

"(16) The minister shall, not later than March 31 in each year, publish a report that sets out the following information for each contravention in respect of which an order was made under this section during the previous year:

"1. The name of the person against whom the order was made.

"2. The amount of the penalty.

"3. A description of the contravention.

"4. An indication of whether an agreement was entered into under subsection (8) in respect of the order and, if an agreement was entered into, the effect of the agreement on the obligation to pay the penalty or on the amount of the penalty."

I'm assuming, given the changes we have made earlier and that the government has agreed to, that they will agree to this without my having to make an argument.

Mr. Wilkinson: We will vote against it because we've contained it in government 111, which we have recirculated, as we did with government 66. We thank the NDP.

Mr. Marchese: If that is true, this would be redundant, then; I didn't have to read it for the record.

Mr. Wilkinson: Yes.

The Chair: You may withdraw it.

Mr. Marchese: Usually, we're reminded by someone, either legal counsel or the clerk, that this is redundant. Anyway, that's helpful.

If there is another motion I'm introducing that is redundant, please let me know.

The Chair: It can't be redundant unless it presupposes the passage of an amendment that hasn't yet been discussed.

Mr. Marchese: Yes.

Mr. Wilkinson: So we have to deal with yours because we agreed to keep the numbering straight. That's why we redid 111, Mr. Marchese.

Mr. Marchese: Sure; OK.

Mr. Wilkinson: It would be the same thing with your motion 109.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Marchese: I move that section 106.1 of the Ontario Water Resources Act, as set out in subsection

2(25) of the bill, be amended by adding the following subsection:

"Five-year review

"(17) At least once every five years, the minister shall cause a report to be prepared and published on the operation of this section, including the effect of this section on prosecutions under this act and including recommendations on the contraventions to which and circumstances in which orders should be issued under subsection (1)."

The Chair: Discussion?

Mr. Wilkinson: We appreciate the member from Trinity-Spadina's motion. We're going to be covering that in 111, but I just want to put on the record that it was the passionate advocacy of the member that made the government see the light of day and amend number 111. We had many discussions on that, and we appreciate your input, but we regretfully vote against.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett: The standing committee will find a PC motion on page 110.

I move that sections 106.2 and 106.3 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be struck out.

Yet again, this is in the spirit of ensuring that the needed level of sufficient senior management oversight is there when a critical decision point comes up, like fining somebody on the job or on the site.

The Chair: Discussion?

Mr. Wilkinson: Again, we agree in principle, but we would recommend voting against it so that we can deal with government motion 111 and make sure that we have this straight legislatively.

The Chair: Shall the amendment carry? I declare the amendment lost.

The long-awaited 111: Mr. Wilkinson.

Mr. Wilkinson: Mr. Chair, before I read it in, because it's just being distributed, it will be the same as we dealt with government 66.

We want to make sure that EP orders will only be issued by directors, not provincial officers. They will be issued against a company, not company officials. It provides specific circumstances where an EP order shall not be issued. It clarifies that absolute liability does not apply to prosecutions. It provides that the payment of an EP order is not an admission of guilt if the person is prosecuted for the same contravention. It places specific restrictions on regulation-making authority for penalty assessments to provide persons with the ability to seek reductions for the steps they take to prevent and mitigate the effect of a contravention and for environmental management systems they have in place, as recommended. Settlement agreements must be posted on the EBR, and the regulations can require public consultation before agreements are entered into.

This revised motion also incorporates the two NDP motions that required annual reports and the five-year review of the environmental penalty regime. This revised

motion also gives a regulated person entitlement to a reduction if they can demonstrate that they took the prescribed mitigative or preventive measures.

1730

I move that sections 106.1, 106.2 and 106.3 of the Ontario Water Resources Act, as set out in subsection 2(25) of the bill, be struck out and the following substituted:

“Environmental penalties

“106.1(1) Subject to the regulations, the director may issue an order requiring a regulated person to pay a penalty if,

“(a) the regulated person contravenes,

“(i) subsection 30(1),

“(ii) a provision of the regulations that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment,

“(iii) a provision of an order, notice, direction, requirement or report under this act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment, or

“(iv) a provision of a licence, permit or approval under this act that establishes or has the effect of establishing a numerical limit, including a limit of zero, on the amount, concentration or level of anything that may be discharged to the natural environment; or

“(b) the regulated person contravenes a provision, other than a provision referred to in clause (a), of,

“(i) this act or the regulations,

“(ii) an order, notice, direction, requirement or report under this act, other than an order under section 84 or an order of a court,

“(iii) a licence, permit or approval under this act, or

“(iv) an agreement under subsection (9).

“Exceptions

“(2) Subsection (1) does not apply to,

“(a) a contravention of subsection 30(1), if,

“(i) neither this act nor the Environmental Protection Act requires the regulated person to notify the ministry of the discharge to which the contravention relates, or

“(ii) the discharge to which the contravention relates was authorized under this act or the Environmental Protection Act; or

“(b) a contravention of section 98.

“Contents of order

“(3) The order shall be served on the person who is required to pay the penalty and shall,

“(a) contain a description of the contravention to which the order relates, including, where appropriate, the date and location of the contravention;

“(b) in the case of a contravention of subsection 30(1), contain a description of the adverse effects that were caused by or that may be caused by the contravention;

“(c) specify the amount of the penalty;

“(d) give particulars respecting the time for paying the penalty and the manner of payment; and

“(e) provide information to the person as to the person's rights under section 100.

“Amount

“(4) The amount of the penalty shall be determined in accordance with the regulations.

“Maximum penalty

“(5) The amount of the penalty shall not exceed \$100,000 for each day or part of a day on which the contravention occurred or continued.

“Absolute liability

“(6) A requirement that a person pay an environmental penalty applies even if,

“(a) the person took all reasonable steps to prevent the contravention; or

“(b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

“Same

“(7) For greater certainty, nothing in subsection (6) affects the prosecution of an offence.

“Limitation

“(8) An order requiring payment of an environmental penalty shall be served not later than the first anniversary of the later of the following dates:

“1. The date the contravention occurred.

“2. The date on which the evidence of the contravention first came to the attention of the director or a provincial officer.

“Agreements

“(9) The director and a person against whom an order may be or has been made under subsection (1) may enter into an agreement that,

“(a) identifies the contravention in respect of which the order may be or has been made;

“(b) requires the person against whom the order may be or has been made to take steps specified in the agreement within the time specified in the agreement; and

“(c) provides that the obligation to pay the penalty may be cancelled in accordance with the regulations or the amount of the penalty may be reduced in accordance with the regulations.

“Publication of agreements

“(10) The ministry shall publish every agreement entered into under subsection (9) in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993.

“Penalty does not prevent prosecution

“(11) A person may be charged, prosecuted and convicted of an offence under this act in respect of a contravention referred to in subsection (1) even if an environmental penalty has been imposed on or paid by the person or another person in respect of the contravention.

“No admission

“(12) If a person pays a penalty imposed under subsection (1) in respect of a contravention or enters into an agreement under subsection (9) in respect of a contravention, the payment or entering into of the agreement is not, for the purposes of any prosecution in respect of the contravention, an admission that the person committed the contravention.

“Failure to pay when required

“(13) If a person who is required to pay an environmental penalty fails to comply with the requirement,

“(a) the order or decision that requires the payment may be filed with a local registrar of the Superior Court of Justice and may be enforced as if it were an order of the court;

“(b) the director may by order suspend any licence, permit or approval that has been issued to the person under this act until the environmental penalty is paid; and

“(c) the director may refuse to issue any licence, permit or approval to the person under this act until the environmental penalty is paid.

“Same

“(14) Section 129 of the Courts of Justice Act applies in respect of an order or decision filed with the Superior Court of Justice under subsection (13) and, for that purpose, the date on which the order or decision is filed under subsection (13) shall be deemed to be the date of the order that is referred to in section 129 of the Courts of Justice Act.

“Regulations

“(15) The Lieutenant Governor in Council may make regulations,

“(a) specifying the form and content of orders under subsection (1);

“(b) specifying types of contraventions or circumstances in respect of which an order may not be issued under subsection (1);

“(c) requiring and governing public consultation before an agreement is entered into under subsection (9) and, subject to that subsection and to any regulations made under subclause (d) (iv), governing the contents of agreements under that subsection;

“(d) governing the determination of the amounts of environmental penalties, including,

“(i) prescribing criteria to be considered in the exercise of any discretion,

“(ii) providing that the total amount of the penalty for a contravention that occurs or continues for more than one day not exceed a maximum prescribed by the regulations,

“(iii) providing for different amounts depending on when an environmental penalty is paid,

“(iv) with respect to agreements under subsection (9), governing the cancellation of the obligation to pay an environmental penalty or the reduction of the amount of an environmental penalty;

“(e) prescribing circumstances in which a person is not required to pay an environmental penalty;

“(f) prescribing procedures related to environmental penalties;

“(g) respecting any other matter necessary for the administration of a system of penalties provided for by this section.

“General or particular

“(16) A regulation under subsection (15) may be general or particular in its application.

“Regulations governing determination of amounts

“(17) The regulations made under clause (15)(d) must, with respect to a contravention referred to in clause (1) (a), provide for the following matters:

“1. The person who is required to pay the penalty must be entitled,

“i. to seek and obtain a reduction in the amount of the penalty if the person took steps prescribed by the regulations to prevent the contravention in respect of which the penalty is imposed, and

“ii. to seek and obtain a reduction in the amount of the penalty if the person took steps prescribed by the regulations to mitigate the effects of the contravention in respect of which the penalty is imposed.

“2. The determination of the amount of the penalty must take into account factors prescribed by the regulations that relate to the seriousness of the contravention in respect of which the penalty is imposed.

“3. If the director is of the opinion that, as a result of the contravention in respect of which the penalty is imposed, a monetary benefit prescribed by the regulations was acquired by the person who is required to pay the penalty, the amount of the benefit must be considered in determining the amount of the penalty.

“Environmental management systems

“(18) The regulations made under clause (15)(d) must provide for a reduction in the amount of an environmental penalty if, at the time the contravention to which the penalty relates occurred, the person who is required to pay the penalty had in place an environmental management system specified by the regulations.

“Annual report

“(19) The minister shall, not later than March 31 in each year, publish a report that sets out the following information for each contravention in respect of which an order was made under this section during the previous year:

“1. The name of the person against whom the order was made.

“2. The amount of the penalty.

“3. A description of the contravention.

“4. An indication of whether an agreement was entered into under subsection (9) in respect of the order and, if an agreement was entered into, the effect of the agreement on the obligation to pay the penalty or on the amount of the penalty.

“Five-year review

“(20) At least once every five years, the minister shall cause a report to be prepared and published on the operation of this section, including the effect of this section on prosecutions under this act and including recommendations on the contraventions to which and

circumstances in which orders should be issued under subsection (1).

“Application

“(21) This section does not apply to contraventions that occurred before this section came into force.”

1740

The Chair: Discussion?

Mr. Miller: To the parliamentary assistant, first of all, this is a huge amendment, but on your section “Exceptions” on page 2 of your motion, “(b) a contravention of section 98,” can you explain what section 98 is?

Mr. Wilkinson: I could ask Stephen.

Mr. Carty: Section 98 is the obstruction section of the act, meaning obstructing a government ministry official from doing their job.

Mr. Miller: So, to further explain it, an environmental penalty can’t be issued if an officer is being obstructed from doing their job. Is that correct?

Mr. Carty: That’s right. That would be left to be pursued through a prosecution.

Mr. Miller: Very good.

Mr. Barrett: Here again we’ve been handed a seven-page amendment just before it was read into the record. I don’t know about the rest of the members of this committee, but I find it difficult to assess whether this seven-page amendment truly addresses the flaws in this proposed legislation. I feel it puts the committee in an awkward position. I realize it’s just been revised today, May 30, but at minimum it would have helped to have gotten this the night before to have had at least some time to read it.

I don’t know whether you have had a chance to show it to anybody in the environmental community or within industry and some of the stakeholders who are attempting to follow this. They’ve indicated to me they’re really getting concerned, partly because they don’t understand part of what is going on here.

Mr. Wilkinson: Mr. Barrett, with respect, both the original government 66 and 111 stand the same as revised, except for three areas. We’ve incorporated the two friendly amendments that came from the NDP in regard to five-year review and also the annual report. The last thing is that it gives an entitled person the entitlement to a reduction if they can demonstrate they took the prescribed mitigative or preventive measures. I think that’s responsive to what we’ve been hearing from people.

It’s not like this is a brand new motion. It’s the same one that was here two weeks ago, other than the fact that, from an ordering point of view, we took the two NDP motions and put them into this section to make sure we had the numbering correct. We took the advice of people, that they wanted to make sure—you’ve mentioned many times about the need for the carrot and the stick. What we’ve said is that if companies with environmental management systems take that step up, which is what we want, then that will be taken into account. It’s exactly what people have asked for.

Mr. Marchese: All the member is saying is that if you’re going to make some changes, whether they’re substantive or minor, it would be nice to look at it the previous day. That’s all he is saying.

Mr. Barrett: People who will be involved by this legislation will just have to take your word for it.

Mr. Wilkinson: Well, we’re at first reading, Mr. Barrett.

The Chair: Shall the amendment carry?

Mr. Miller: Just one other clarification: I know you’ve used the same terminology in other amendments, but on the first page of this one, where you’re saying “a numerical limit, including a limit of zero,” could you explain? Obviously, if there is a zero discharge, I would assume there is not going to be an environmental penalty issued, so why do you say “including a limit of zero”?

Mr. Wilkinson: Because a company can have a certificate of approval, but we’re very specific in our certificate of approval as to what they can and cannot do. If they take something and introduce it to their manufacturing process and add something else into the environment that wasn’t in their approval or as a result of the incident that happened, and that caused a problem, this bill ensures we can apply an environmental penalty and they can’t weasel out of it by saying, “Oh, that wasn’t in. We didn’t know about that.”

We have to make sure we’re very clear that the government reserves the right that there are certain things that are not to be released into the environment under any circumstances. That’s why you can have a numerical limit of zero.

Mr. Miller: So even if there’s not a discharge, there still can be an environmental penalty.

Mr. Wilkinson: The onus is on the government and on the ministry to be very specific, as we’ve learned through this process, about exactly what we say happened. This can’t be something that just kind of floats in. Again, the company has the right to go to the Environmental Review Tribunal immediately. With absolute liability, we are assured that they will be swift of foot and we will deal with the issue.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: We would refer to page 117 in our package.

I move that section 2 of the bill be amended by adding the following subsection:

“(26.1) Subsection 107(2) of the act is amended by striking out ‘under section 84’ and substituting ‘under section 84 or 106.1.’”

This motion will ensure that there is no prospect that a person can face prosecution for the failure to pay an environmental penalty or a cost recovery order. It ensures appropriate separation between prosecutions and civil process and that only civil collection methods will be used because environmental penalties are not prosecutions; they are civil.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subparagraph 2 i of subsection 109(1) of the Ontario Water Resources Act, as

set out in subsection 2(30) of the bill, be struck out and the following substituted:

“i. contravening subsection 30(1) or (2)”

This motion makes the failure to report a discharge, as required under subsection 30(2), a second-tier offence, congruent to what we talked about under the Environmental Protection Act.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 110.1(6) of the Ontario Water Resources Act, as set out in subsection 2(32) of the bill, be amended by striking out “may consider the order” and substituting “shall consider the order.”

This motion will require a court to consider the payment of an environmental penalty as a mitigating factor when determining sentence for that same contravention. It would be congruent to what we talked about under the EPA amendments.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 116(1) of the Ontario Water Resources Act, as set out in subsection 2(37) of the bill, be struck out and the following substituted:

“Duty of director or officer

“(1) Every director or officer of a corporation has a duty to take all reasonable care to prevent the corporation from,

“(a) discharging or causing or permitting the discharge of any material, in contravention of,

“(i) this act or the regulations, or

“(ii) a licence, permit or approval under this act;

“(b) failing to notify the ministry of a discharge of any material, in contravention of,

“(i) this act or the regulations, or

“(ii) a licence, permit or approval under this act;

“(c) contravening section 98;

“(d) failing to install, maintain, operate, replace or alter any equipment or other thing, in contravention of a licence, permit or approval under this act; or

“(e) contravening an order, direction, notice or report under this act, other than an order under section 84 or 106.1.”

This motion will reduce the scope of the duty of corporate officers and directors from the duty specified in

Bill 133 so that it focuses on contraventions of a serious nature.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 116(2.1) of the Ontario Water Resources Act, as set out in subsection 2(38) of the bill, be struck out and the following substituted:

“Onus

“(2.1) If a director or officer of a corporation is charged with an offence under subsection (2) in connection with a specific contravention of the corporation, the director or officer has the onus, in the trial of the offence, of proving that he or she carried out the duty under subsection (1) in connection with that contravention.”

Again, the motion clarifies that in a prosecution the crown has the onus of showing that the corporation committed a contravention before the onus shifts to the corporate officer or director to show that they took all reasonable care.

The Chair: Shall the amendment carry? Carried.

Shall section 2, as amended, carry? Carried.

Mr. Wilkinson: I move that subsection 3(2) of the bill be struck out and the following substituted:

“Same

“(2) Subsections 1(2), (2.1), (2.2), (3), (37), (44.2), (45), (53), (57), (58), (59), (59.1), (60), (67) and (68) and 2(1), (1.1), (4), (8), (23), (25), (26), (35) and (36) come into force on a day to be named by proclamation of the Lieutenant Governor.”

This just cleans up the section in regard to numbering.

The Chair: Either that or they're good Lotto 6/49 numbers.

Mr. Wilkinson: I was thinking bingo, myself.

The Chair: Shall the amendment carry? Carried.

Shall section 3, as amended, carry? Carried.

Shall section 4 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 133, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Ladies and gentlemen, this concludes our business for the day. This meeting is adjourned.

The committee adjourned at 1751.

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Ministry of the Environment

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Ministry of the Attorney General



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**Legislative Assembly
of Ontario**
First Session, 38th Parliament

**Assemblée législative
de l'Ontario**
Première session, 38^e législature

**Official Report
of Debates
(Hansard)**
Monday 6 June 2005

**Journal
des débats
(Hansard)**
Lundi 6 juin 2005

**Standing committee on
the Legislative Assembly**

Environmental Enforcement
Statute Law Amendment Act,
2005

**Comité permanent de
l'Assemblée législative**

Loi de 2005 modifiant des lois
sur l'environnement
en ce qui concerne l'exécution



Chair: Bob Delaney
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Monday 6 June 2005

Lundi 6 juin 2005

The committee met at 0934 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr. Bob Delaney): Good morning, everyone, and welcome to the standing committee on the Legislative Assembly. We are here to consider Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters. We'll begin this morning with the suspenseful reading of the subcommittee report. In his finest radio voice, John Wilkinson.

Mr. John Wilkinson (Perth-Middlesex): Thank you, Mr. Chair. Good morning.

Your subcommittee on committee business met on Thursday, June 2, 2005, to consider the method of proceeding on Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings on Bill 133 at Queen's Park as follows: Monday, June 6, 2005, from 9:00 a.m. to 12:00 noon, subject to witness requests and the direction of the Chair.

(2) That the clerk of the committee post notice of hearings as soon as possible on the Ontario parliamentary channel and on the Internet.

(3) That the deadline for receipt of requests to appear be 4:00 p.m. on Friday, June 3, 2005.

(4) That the following be invited to appear before the committee as witnesses: David Donnelly, Environmental Defence Canada; Chris Hodgson, Ontario Mining Association; Robert Wright, Sierra Legal Defence Fund; Paul Muldoon, Canadian Environmental Law Association; Mark Mattson, Lake Ontario Waterkeeper; Faith Goodman, Canadian Petroleum Products Institute; Dr. Riina Bray, Ontario College of Family Physicians; Lisa Kozma, Canadian Manufacturers and Exporters or Canadian Vehicle Manufacturers' Association; Honourable Perrin Beatty and David Surplis, Coalition for a Sustainable Environment.

(5) That notice of the hearings be provided to the witnesses that previously appeared before the committee on Bill 133.

(6) That the length of presentations for witnesses be 10 minutes.

(7) That each of the three parties be allowed to make an opening statement of up to four minutes, subject to availability of time and at the direction of the Chair.

(8) That the committee clerk, at the direction of the Chair, be authorized to schedule witnesses.

(9) That the deadline for written submissions be 12:00 noon on Monday, June 6, 2005.

(10) That proposed amendments to be moved during clause-by-clause consideration of the bill should be filed with the clerk of the committee by 2:00 p.m. on Monday, June 6, 2005.

(11) That clause-by-clause consideration of the bill commence at 4:00 p.m. on Monday, June 6, 2005.

(12) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

I so move.

The Chair: Discussion on the subcommittee report? Shall the report be adopted? Carried.

ENVIRONMENTAL ENFORCEMENT
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
SUR L'ENVIRONNEMENT
EN CE QUI CONCERNE L'EXÉCUTION

Consideration of Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters / Projet de loi 133, Loi modifiant la Loi sur la protection de l'environnement et la Loi sur les ressources en eau de l'Ontario en ce qui a trait à l'exécution et à d'autres questions.

The Chair: Opening statements: Mr. Barrett, you have four minutes.

Mr. Toby Barrett (Haldimand-Norfolk-Brant): Thank you, Chair. Mr. Miller may want to comment as well as we get up to speed.

It certainly has been a bit of a long and winding road to this point. I will stay tuned today—nothing will surprise me—to see where we go next. There are what I consider some bizarre twists and turns that continue as this ship heels from one side to the other.

We have a bill, Bill 133, that was flawed upon its introduction. We initially received 130 pages of amend-

ments. You will recall that during clause-by-clause, just before we were to vote on various sections, we continued to receive amendments. I recall that two of them were up to seven pages long. So I'm concerned.

We will hear testimony this morning. I regret that deputants have received such short notice to come in and testify. In advance, I want to thank people who do approach the witness table. They would obviously have been asked to do a fair bit of work over the weekend to be able to get here this morning to help us make sense of what's going on with Bill 133.

We have two versions of the bill before us now. The second version added another 20 or 25 pages. I don't know whether we debate this tomorrow. We will have a third version that I guess the printing presses will be running tonight. I regret this. I feel it's poor form. I personally feel somewhat embarrassed to be part of all of this.

Mr. Miller, I don't know if you have any comments.

Mr. Norm Miller (Parry Sound-Muskoka): Certainly. I would just like to say that I was a little surprised to learn, having missed one day of the Legislature last week—I went away on Thursday to Montreal to go to my daughter's graduation, which was on Friday. While there, I received an e-mail from my staff notifying me of this meeting Monday morning, that it would be clause-by-clause, at which point I responded via BlackBerry, "No, we just had clause-by-clause on this bill," not knowing that during my one day away from the Legislature, second reading came and went on the bill and clause-by-clause was happening again.

I have to say that it's an unbelievably rushed process. I would ask, what is the rush? Why not take the time to get it right?

0940

I'm glad to see there are some specific groups that have at least been invited, because the notice period was so unbelievably short, but I note that the Ontario Forest Industries Association, one of the major industries of the province, is not on the list of those who might give comment. I'm sure there are other groups as well that are not on the list. I would just like to question the whole process we're going through, why we're rushing things so much.

Mr. Rosario Marchese (Trinity-Spadina): I too, like the concerned members, feel that this process has been very convoluted. It took the government six months to bring it back for debate after they said how important and critical this bill was, including comments at the time from the Premier, who said, "The proposed legislation would also hold corporate officers and directors more accountable. A conviction could result in sentences ranging from fines against a company to up to five years of jail time for its directors and officers." That was on October 8 of last year.

Things have changed, of course, through the amendments, but they've brought it back here directly for second reading, rather than having the debate on second reading in the Legislative Assembly. If they had any

interest in changing the bill, I would have thought that they might have pulled back the old bill, reintroduced the bill with the changes, debated it for second reading and brought it back to hear what people have to say based on those amendments they clearly had in mind to introduce. Then you have a clean process where, having heard people, you debate the bill and the amendments clause by clause, and you're done.

As it is, we passed the clause-by-clause last Monday and had the debate on the bill on Thursday, only to have another subcommittee and be sent back to committee for another quick run: having people come back, both environmentalists and the corporate sector, to respond to the bill and the amendments. We might have amendments once again; God knows. I don't know. I'm not sure who's bringing back amendments, given that we just dealt with this a short while ago.

It is a very convoluted history. I don't know whether the government knows what they're doing. Clearly, they're very confused and torn by various people who have given them input one way or the other. I hope this doesn't go through another tortuous process today, but we'll see.

Mr. Wilkinson: I think it was Winston Churchill who said there are two things that you shouldn't see the making of: laws and sausage. I think this has been one of the most transparent and democratic processes for any bill that we've seen in quite some time in this province.

The bill was introduced last October, as you know, and there were extensive consultations: months and months. People came to the government with diametrically opposed opinions on the bill and were able to share that with the government. The minister therefore looked at amendments. We took this bill out to committee after first reading, which of course is not the normal course, so that people could have a fulsome discussion, and I want to thank the opposition parties, both of which made amendments that the government agreed to.

I think, in the greatest sausage-making tradition of this province in regard to laws, we ended up with a much better bill. One thing I caught is that there wasn't anybody who came and said they didn't believe in the principle that if you pollute, you pay. The question was, how do we do that? Do we follow the American standard and add the tool of environmental penalties?

That's what's happening in this province. I want to personally thank all those who came. Many have come back today, because they get to comment on the bill as it's been substantially amended through this process where all three parties had input on the bill that will be going back for third reading.

Thank you, Mr. Chair.

The Chair: Thank you. We are fortunate enough today to have a number of deputations who may have spice to add to the sausage.

Interjection.

The Chair: You never know. It might be halal.

SIERRA LEGAL DEFENCE FUND

The Chair: Sierra Legal Defence Fund. Good morning and welcome.

Mr. Robert Wright: Good morning, Mr. Chairman, ladies and gentlemen. Thank you for hearing our deposition.

The Chair: Although we've done this once before, just before you start, please state your name for the purposes of Hansard. You'll have 10 minutes this morning. Please begin when you're ready.

Mr. Wright: My name is Robert Wright. I am legal counsel with Sierra Legal Defence Fund here in Toronto. I was the final speaker at the last session, and now I'm first.

We're in favour of this bill moving forward. We think that Winston Churchill would think it's a pretty good sausage, with all its warts.

My focus earlier was on the standard under the Environmental Protection Act and the "likely" to "may" shift. We note that there has been a compromise on that. We understand that it has largely been at the suit of industry. In particular, that compromise has been with regard to prosecutions. So from our standpoint, we would strongly oppose any further compromises. We think enough compromises have been made.

We're glad to see that there has not been a compromise on the onus under the directors and officers provision. From a substantive point of view, that merely follows what has already been established in the Bata case, but makes it more clear and sets down the game rules so that everyone knows what they're playing under. From a procedural point of view, it also reinforces what was said in *R. v. Sault Ste. Marie*, which is that when you are dealing with large corporations, they are the ones who best know what is going on in the minds of their directors, and that's what we're dealing with with these MISA companies.

I'd like to briefly comment on the environmental law section comments which I saw in the last submissions. I'd point out that although it's called the environmental law section, it's really, from our standpoint, the industry environmental defence section of the Ontario bar. It reflects industry concerns. It does not reflect the concerns of the environmental groups of like mind to Sierra Legal.

I think you should be proud that this legislation will set the benchmark for other provinces to follow. I think it is a progressive piece of public interest litigation.

I'd like just to quote from a book edited by Professor Friedland. It's an article written by Richard Brown and Murray Rankin. They summarize, I think, quite nicely the effect of administrative penalties. They say, "Regulators who can impose administrative penalties are much better equipped to tackle this compliance deficit than those who must resort to criminal prosecution. The administrative process responds to risk rather than to harm, does not unduly stigmatize offenders who are thought not to warrant moral opprobrium, applies a standard of absolute as opposed to strict liability in at least some cases, entails

minimal operating costs, and imposes monetary penalties large enough to have a reasonable prospect of deterring offenders. Criminal prosecution, the most common sanction of last resort among Canadian regulatory agencies, scores poorly on all these counts."

They go on to suggest, of course, that you need both, which we will have.

So it's not perfect, but it's pretty darned good. I'd ask that we get on with making polluters pay. Thank you very much.

The Chair: Thank you. We should have a little bit of time for questions this morning, beginning with Mr. Barrett.

Mr. Barrett: Thank you, Chair, and thanks to Sierra Legal Defence Fund.

The lead that Dr. Isobel Heathcote took on the IPAT report to government—the executive summary, for example, doesn't mention administrative penalties. There is mention of penalties in the body of the report, much of it as a platform to discuss carrots in addition to sticks. It's used, in my reading of Dr. Heathcote's report, as recommendations to the government to move beyond the command-and-control and fine-and-penalty approach.

As we all know, a number of recommendations have come forward. Do you feel there could have been additional reflection on those suggestions for incentives, for example, to help prevent these kinds of problems, or is that not possible in the context of this legislation?

0950

Mr. Wright: I think we need all three: criminal prosecutions, administrative penalties and the carrots you're referring to. My understanding is that there are initiatives going on as we speak, and have been going on for some time, to get industry together with government and to streamline approaches where industry has shown it's acted responsibly with respect to the environment. So all three approaches are necessary; I would agree with that.

Mr. Marchese: Mr. Wright, the government has moved away from their initial use of the lower threshold for determining adverse effects to the natural environment, constituted by the term "may," to the higher threshold for proving environmental harm by the use of the word "likely." You made reference to this, but are you not bothered by it? Because I am.

Mr. Wright: The move, as I understand it, has not been made with respect to prosecution. So it remains at "likely" that the administrative penalties will be moving to "may." I started and finished my remarks by saying it ain't perfect; this is where it ain't perfect. On the other hand, with prosecutions, those will usually be the most serious fact situations. If it's going to be criminal prosecution with that stigma, I can understand the policy reason for going the two directions, although I would have frankly preferred the "may" standard for both.

The Chair: Thank you. Mr. Wilkinson?

Mr. Marchese: I have another question.

The Chair: Is it a quick one?

Mr. Marchese: Yes. With respect to removing directors from any liability, do you have an opinion on that?

Mr. Wright: They have not, as I understand it, been removed from liability, and I don't think they should be. There was a push to get rid of the reverse onus on them, and that I would object to. If any further changes were made in that direction, (1) they would be unnecessary, and (2) they would take away any of the teeth of the administrative penalty.

Mr. Wilkinson: Thank you for coming, Mr. Wright. Just to clarify the question about directors that has to do with environmental penalties, we issue environmental penalties to those corporations that have their certificate of approval; in other words, we know who they are. But that doesn't change the question of liability for directors in regard to prosecutions.

But my question to you has to do with the fact you referenced the Bata case. We've heard a lot about R. v. Sault Ste. Marie and also the precedent in the Transport Robert case. I think you also mentioned Bata. Could you briefly outline that case for us?

Mr. Wright: The Bata case basically stands for the principle that is being put forward in subsection 194(2.1), the onus section. In that case, an Ontario court held that under the legislation, there was nothing contradictory and offensive to the law that in a situation where the crown had put forward the facts of harm to the environment, the directors having the best knowledge of what they have or haven't done to prevent that harm should, at that point, have the onus shift to them to prove that they took all reasonable steps to avoid it.

The Chair: Thank you very much, Mr. Wright.

ENVIRONMENTAL DEFENCE

The Chair: Environmental Defence: Good morning. Welcome.

Dr. Rick Smith: Good morning.

The Chair: You have 10 minutes before us this morning. Please begin by stating your name for the purposes of Hansard. If there's time remaining after you've made your deputation, it will be divided among the parties for questions. The floor is yours.

Dr. Smith: Thank you very much, Mr. Chair. My name is Rick Smith. I'm executive director of Environmental Defence. I'd like to say good morning to everyone and a very happy national Environment Week. I hope you all heeded Minister Dombrowsky's suggestion in the Toronto Star this morning and enjoyed your public transit ride to work. Though it's very nice to see you all, I wish I could say that my organization is delighted to be presenting to this committee on this subject for a second time; actually, we just want this thing passed as soon as possible.

Environmental Defence supports Bill 133 as it was debated and passed at second reading. Though somewhat weakened from its initial introduction, the bill is still a useful response to a pressing public policy need.

I should hasten to add, though, that any further weakening of this bill will cause us to re-evaluate our support. No further amendments are necessary. This piece of legislation is so essential, so long overdue, that our expectation is that it will be passed by the Legislature before the summer recess.

I think the overall context of Ontario's pollution crisis is important to note here. Simply put, Ontario has become one of the worst polluting jurisdictions in North America. In 2002, the last year for which data are available, over one billion kilograms of pollutants were reported released into Ontario's air and water, making Ontario by far the most polluted province in Canada. Releases to air included over 964 million kilograms of pollutants with respiratory effects, almost two million kilograms of carcinogens and over 162 million kilograms of pollutants with developmental and reproductive effects. Overall, between 1995 and 2002, the total release of pollutants in Ontario, as reported to Environment Canada, grew by 54%. Some of that is certainly an artifact of better sampling, better methodology, but any way you slice it, that is not good news.

Every year, the NAFTA Commission for Environmental Cooperation, the CEC, reports on the continent's progress on pollution prevention. In its latest report, released just two weeks ago, the 2002 Taking Stock report—I have a copy here—the CEC noted that, for the 203 toxic chemicals it tracks, Ontario is the second-worst polluter in North America. Only George Bush's Texas releases and transfers more pollutants on our continent.

The CEC also notes that though Canadian facilities only represent 5% of the total facilities reporting lead and its compounds, Canadian industries accounted for an incredible 42% of air emissions continent-wide in 2002. Air releases of lead were, on average, more than 13 times greater for Canadian facilities than for those in the United States. Ontario is the leader, emitting fully 15% of the total lead air releases in North America. Ontario is the second-worst air polluter overall on our continent.

The statistics quoted in the preceding three paragraphs lay bare the scope of legal pollution in Ontario; that is, the pollution that industries can emit under their relevant government permits, certificates of approval etc. This kind of pollution needs to be prevented, and we certainly hope that the government moves quickly to do so. What Bill 133 does to take a first sensible step toward scaling back pollution is crack down on illegal activity. Frankly, I think this is something that most Ontarians assume their governments are doing anyway. The need for this bill could not be clearer.

MISA facilities accounted for 84% of reported illegal pollution spills by volume in 2003 and 97.9% in 2004. They are clearly the right industries for Bill 133 to target. From 2003 to 2004, reported illegal spills by MISA facilities increased in frequency, increased in volume and increased in average weight. The frequency increased by 13%.

I won't read you the whole list, but these are not trivial chemicals that we're dealing with. The list of spilled contaminants, as reported by industrial facilities to the MOE, is extensive and includes many, many poisonous and toxic substances.

Available evidence indicates that many MISA facilities are not complying with current law and regulation. Again, I won't belabour the statistics here, but you know that the recently released report by the MOE swat team, titled Environmental Compliance in the Petrochemical Industry in the Sarnia Area, revealed an almost 100% lack of compliance with existing law and regulation. Almost one quarter of the facilities inspected had no spill prevention plan, no spill contingency plan or just had one of the two.

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So in sum, our province is now an internationally recognized, continentally significant pollution delinquent. This enormous pollution problem is the result of years of inaction by government and a lack of priority by industry. Bill 133 responds to MISA facilities' current lack of compliance with environmental law and regulation with instruments that already exist in other jurisdictions in the US and in Canada. This isn't rocket science; it doesn't reinvent any wheels. It's time to get on with the job of pollution prevention in Ontario. Bill 133 requires no further amendment.

I have to say I'm dismayed that, even with the almost 100 pages of amendments to this bill introduced at first reading, in response largely to industry concerns, some industries continue to oppose this bill. They're still demanding further weakening, and one has to conclude, frankly, that these are the antisocial defenders of a toxic status quo. Their arguments boil down to an appeal to this Legislature to go easy on their illegal activities, and I think they should be ashamed of themselves. Making illegal polluters pay to clean up their own mess is the right thing to do, both economically and environmentally. Every day that Bill 133 doesn't pass results in measurable hardship for Ontarians and their communities.

I'll end as I began: The best way for this committee and the Legislature to celebrate national Environment Week, which begins today, which kicks off with this committee hearing, is to pass this bill, as it is, in the next few days.

The Chair: Thank you. We should have time for one focused question, Mr. Marchese.

Mr. Marchese: Mr. Smith, are you anticipating any amendments today?

Dr. Smith: I think I've made it clear that we're hoping there are no amendments today. I'm not quite sure what to expect.

Mr. Marchese: Me neither.

Mr. Wilkinson: It's going to be a good week.

Dr. Smith: Excellent.

Mr. Marchese: So why are we here?

The Chair: Thank you very much for your deputation this morning.

ONTARIO MINING ASSOCIATION

The Chair: Ontario Mining Association, good morning.

Mr. Chris Hodgson: Good morning, Chair Delaney, and committee. My name is Chris Hodgson, and I'm the president of the Ontario Mining Association. I also have 25 copies of my presentation, if somebody wants to grab those.

Thank you for giving the OMA time on the agenda today, Mr. Chair and committee members. We were pleased to make a presentation to you during the last round of hearings. The Legislature has decided to consult further with stakeholders, and we're here today to emphasize three concerns we still have with Bill 133.

Let me start by saying that the OMA feels there have been improvements made to the bill during the committee process. The minister went out of her way to hear our concerns and through amendments has addressed many of the offensive aspects of the original bill. We strongly feel that there should have been consultation with the affected industries prior to introduction, but we really appreciate the minister's willingness, and that of many MPPs and cabinet ministers, to meet with the OMA and member companies subsequently.

In those meetings, we have emphasized that Ontario is an envied mining jurisdiction around the world. This is not only because of our geological resources, but it's because of the certainty of operating costs based on clear, science-based and consistently enforced laws. Bill 133 has the potential to take us away from that environment. Let me give you the reasons why.

As I said at the first reading hearings, the Ontario Water Resources Act changes should be subject to a separate bill. These changes apply to all Ontarians and lead to the basis of enforcement of the OWRA, and therefore require consultation with the public at large. That being said, however, the implication for our members is as follows:

A pollution offence, under section 30 of the Ontario Water Resources Act, should be based on the circumstances of the discharge and not just the nature of the discharge. The definition for "deemed impairment" under the Ontario Water Resources Act only looks at the material being discharged. It does not look at the circumstances of the discharge, such as how much is being discharged or even the risk of an adverse effect. This would be problematic for the metal mining industry. For example, every bit of seepage from a rock pile could be considered an offence because it would contain metal. There would be no consideration as to whether or not the seepage could or would cause an adverse effect.

Subsections (d), (e) and (f) of the proposed definition for "deemed impairment" focus solely on the characteristics of the material being discharged. The Ontario Mining Association would like to see these subsections amended so that the circumstances of the discharge are included in the definition. That's the major concern. That

moves us away from a science-based risk process, which most jurisdictions operate under, and clear laws.

Our second concern, which isn't as major—that's our major one—has to do with the new fine structure and the penalty sections. Our members are quite concerned about the lack of due-diligence defence for environmental penalties. Any company that does all that it could and should be doing to prevent an event, and then compensates and remediates after an event, should not be penalized. Environmental penalties should not be applied to self-reported exceedances. This, combined with absolute liability provisions, makes it impossible for anyone to defend themselves. Without a due-diligence defence, a regime that would follow the act could easily be set up whereby you exceed a limit, you report and you pay. These are legal limits. This appears to be a new tax.

Unlike the other MISA sectors, the metal mining and industrial mineral sectors have concentration limits, measured as milligrams per litre. Operations have been working on increasing water recycling and working toward zero discharge as much as possible. However, the more the water is recycled and reduced, the higher the concentration may be in the discharge. The total loadings still decrease and the potential for adverse environmental effects decreases; however, the potential for exceedances increases.

In 2002, the mining industry was 99.6% in compliance with all of the required MISA limits for the chemical parameters of its discharge samples. Given that thousands of samples are taken each year, the 0.04% non-compliance rate means that there were 40 exceedances. These exceedances are self-reported to the MOE.

The proposed fine structure—this is the fine structure, not the penalties—is equally troubling. The wording in Bill 133 implies that at least the minimum fine would be charged for each exceedance as long as there were no aggravating factors. According to the proposed legislation, if each exceedance was by a different company, the total fines to the industry would be \$1 million. Given that there's no limitation on the cumulative nature of these fines, the industry would be subject to a minimum of \$2 million in fines the following year and \$4 million in fines after that. The proposed prescriptive fine structure places too much emphasis on the discharge and not enough emphasis on the effects to the environment.

The third area is the special-purpose account. There were no amendments proposed to this section.

Responsible parties are already required to compensate the private sector, municipalities and the provincial government for their reasonable expenses associated with the incident. A community fund would duplicate this allotment, and it's not clear where this money is being allocated, nor who is responsible for managing this money. We would suggest the community fund should not be used for projects unrelated to the incident. It should be used only in those communities where the incident took place. Responsible parties should not be required to pay twice for the same incident, and there

must be clear and transparent accountability for how these funds are used.

Let me finish by saying that mining today is a modern, safe, environmentally responsible, high-tech industry. Mining is a solution provider. Ontario's mineral products, along with being the building blocks of our modern society, are used to reduce energy consumption, cut emissions, clean up the environment and reduce pollution. Mining is one of the few industries which take place in all parts of the province, and all of the province benefits from the social and economic contributions of the mining industry. As I said in my last presentation, but it bears repeating, along with improvements to safety, our operations have a new environmental focus.

I urge you to consider how Bill 133 will have a direct impact on the ability of Ontario's companies to compete, because it takes away an advantage we have: clear laws with predictable costs. The Mining Act is clear and consistently applied. Certificates of approval and MISA rules are clear, and we have practices that meet them. Our concern is that Bill 133 changes the certainty of operating compliance costs.

I've made a personal appeal to the minister, and will repeat it into the record today, that we would like to be consulted in the drafting of the regulations. This would allow our members and the Ministry of the Environment to understand the impact ahead of time. It would also ensure that the Ontario mining industry remains both a competitive and an environmentally conscious member of our society.

Thank you very much for your time.

The Chair: Thank you. If we can be thoughtfully concise, we should be able to manage one brief question per caucus, beginning with Mr. Wilkinson.

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Mr. Wilkinson: Thanks for coming in again, Chris.

Just a question about the mandating of spill prevention and spill contingency plans: Do you think mandating that—that's something that some of your members, if I recall, have and others don't—will help raise that bar, so that all members will—

Mr. Hodgson: Exactly. We're in favour of that. A lot of our companies have invested millions and millions of dollars on ISO 14001 standards or other systems like that. You want to get a handle on everything that's happening in your operation, from the plant floor, from the ground, right up to the head office. There has been a lot of money spent on that, and a lot of time. It takes a daily effort, similar to what we did around safety.

Mr. Wilkinson: Some of the members of your group have said that, that they've done the right thing and they have competitors who haven't—

Mr. Hodgson: Right, and now they're penalized.

Mr. Wilkinson: But now, by raising up the standard—

Mr. Hodgson: That's a good thing in the amendments. That's fine. You're trying to use the carrot a bit.

Mr. Miller: Thank you, Chris, for coming in again today.

On your point that environmental penalties should not be applied to self-reported exceedances—and you point out that in the mining industry, 99.6% are in compliance—with the passage of this bill, could you see a situation where industry doesn't report their exceedances because they know they're going to receive a fine? It's a given. They're going to receive a fine, so it could actually work against the goal of the bill, which would be to prevent—

Mr. Hodgson: It takes away the incentive, but the companies that we represent are large international companies, for the most part, and they want to do the responsible, right thing.

With the MISA requirements, there are about 10,000 tests a year for various components of what is emitted. The point is that, for example, during the spring runoff, the other water going into the pond is probably more contaminated than what's gone through the purification system, but occasionally you get an exceedance. Out of 10,000, there would be about 40. Some of them are just errors at the lab, some of them are due to the spring runoff, and there are other things that happen out of 10,000 tests. There's no adverse effect because the receiving body, in most cases, is more contaminated with the background minerals. We're talking about mineral mining, where these things occur naturally in nature. It's not some other kind of process where you're creating a new compound.

All we're saying is, with the cumulative nature of this, if you're fined on that, then the next year you get 40 on top of it and you go up another threshold in the tiering system. We just think there should be some amendment or some acknowledgement that self-reporting MISA exceedances—you'd have to work it out so it didn't affect the environment but take into account the present state of affairs.

The way around this, and that's why it's not a big issue for us, is that you just stop recycling water. The more you recycle water, the more concentrated you get. It's better for the environment, your loading is less, but it's easier to operate if you don't do it. Then you're in total compliance, but that sort of goes against what you're trying to achieve here. We want to use less water and get better science and better processes to take it down to zero.

Mr. Marchese: Welcome back, Mr. Hodgson, as a visitor here.

Mr. Hodgson: Thank you. It's good to see you, Rosie.

Mr. Marchese: Mr. Smith said that Bill 133 deals with illegal activities, mostly. I think that was his argument. You're not asking us to go easy on illegal activity, are you?

Mr. Hodgson: No, not at all. Our first and major concern is with the Ontario Water Resources Act, where you're bringing in uncertainty around what is "deemed impairment." We think there should be a regulation-making authority to make it so that there is no adverse impact on the environment but there is some common sense applied here.

For example, in northern Ontario there are lots of lakes that have naturally occurring minerals. If you took water out of that lake and put it into a test tap, under this definition, it would fail. You'd be in violation of the act if you killed 50% of the daphnia in a test tube environment. We think there should be some recognition of the circumstances to which the discharge takes place, so there is not an adverse effect on the environment. There has got to be some scientific, risk-based analysis done on that, and allowed for in the act.

The Chair: Thank you for coming in this morning, Mr. Hodgson.

COALITION FOR A SUSTAINABLE ENVIRONMENT

The Chair: The Coalition for a Sustainable Environment. Good morning.

Dr. David Surplis: Good morning, Mr. Chair. My name is David Surplis. I'm chair of the Council—the Coalition for a Sustainable Environment, and past president of the Council of Ontario Construction Associations. I get those acronyms mixed up sometimes.

Thank you for having this additional session. As you know, we were before you just a couple of weeks ago, on May 12. Just before we presented, the honourable minister presented some amendments, and we asked for an opportunity to respond to those at that time, and so we're grateful for this additional opportunity.

Lots of things have been said about the gestation of Bill 133. Mr. Marchese, for instance, mentioned it at length this morning. But there's one thing that we want to make abundantly clear: Bill 133 is not the bill that we would have envisioned, had all the stakeholders been involved in its drafting, but that's all past. We've had a transparent process, as the parliamentary assistant has so correctly pointed out. We want to reassure everybody that thousands of member companies in the Coalition for a Sustainable Environment—literally, thousands and thousands—are in favour of legislation to protect and enhance the environment. All of them subscribe to the principle that polluters must pay. What we would like is the legislation to be totally workable and in the best interests of everybody—the citizens, the environmentalists, workers, officers and shareholders of companies in the industries that work with natural resources in Ontario.

We perceived a number of unintended problems, or what we thought were unintended, in Bill 133, as it was first drafted, and we sought the opportunity to bring them to your attention. We were pleased when the Honourable Mrs. Dombrowsky introduced amendments to clarify some points of the bill and to improve its application. Some have said that this is watering down, but in reality we believe that all the intended effects of the bill are very much in place.

We were told that the first effect of the legislation was to allow government to be "swift afoot"—that's Lois Corbett's favourite expression—in protecting municipalities' water supplies and to ensure rapid action and

financial recompense when there is a spill or unauthorized discharge. So to provide that speedy response without waiting for potentially lengthy trials, the ministry chose environmental penalties to serve that purpose. Upon passage of this bill, that tool will be available to the ministry and the municipalities and it will be utilized whenever there is a problem.

Once again, I would like to say as clearly as I can that the goal of coalition members is no spills or problems. That's where we want to go, and you heard that from Mr. Hodgson too. It was unfortunate, for example, that in the discussion following the release of the SWAT report, emphasis was made on the negative aspects instead of the many, many evidences of progress being made in the Sarnia area. Again, that's past.

My point is simply this: The government has chosen to address what it sees as a problem in a particular way. The coalition members have not been critical of action being taken; we have been critical of the process in which the action was taken.

However, in response to our complaints and the complaints of others, the government listened and, in a relatively novel move, sent the bill to this committee after first reading. During those first hearings, we said that there were some unintended consequences, and many of our complaints were addressed by amendments, as you well know.

We thought it was unfair, for example, that EPs could be served on employees, when it is the company that controls all aspects of its operations, and that has been removed and we are pleased.

We thought it would be unfair for EPs to be issued by field staff, and that has been addressed by the amendment that says that EPs are to be issued by a director or someone more senior, although the bill still says that the director may delegate his responsibilities.

We believe that EPs should be set at levels commensurate with the amount of damage, that the payment of EPs should be utilized to offset fines under the EPA or the OWRA and that the payment of an EP should not be taken as an admission of guilt. All of those things were addressed by this committee by amendments produced by the minister.

We were alarmed that the value of due diligence was being demeaned and dismissed in the original wording of the bill. The amendment says that actions taken and finances expended by a company can now be recognized in setting the level of EPs, and that helps restore the value of due diligence, which is the cornerstone of best practices.

The amendments accepted after first reading have therefore improved this bill, in our opinion. As I said at the outset, we do not accept that Bill 133 was conceived in the most orderly of fashions, but it can be improved, and for what's been done already, we thank you.

There are, however, a few matters that still cause great concern for stakeholders in industry and commerce. Four principal areas of concern, we believe, require further amendment. We have checked them, and implementing them will not detract from the intent of this bill. In fact,

we are firmly of the opinion that what we're proposing will improve the legislation and facilitate compliance. While we might be addressing significant deficiencies in the present bill, what we're proposing is technical in nature and is consistent with the bill's principles.

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The first two areas of concern deal with the same issue: reverse onus. The companies participating in the coalition believe that reverse onus, or "guilty until proven innocent," should not apply in situations that can lead to significant fines and even to jail terms. We believe that the customary civil and legal rights should be applied.

Our first proposed amendment relates to appeal of provincial officers' orders relative to discharges, again, where the reverse onus applies. We believe that subclause 145.5(1)(b)(ii) of the Environmental Protection Act and subclause 102.1(1)(b)(ii) of the Ontario Water Resources Act should be deleted to give effect to the principle of fair defence, but the reverse onus for EPs would still apply.

Our second proposed amendment deals with the responsibilities of officers and directors that are included in the bill. We state as firmly as we can that a reverse onus obligation is troublesome in almost all cases, but it is particularly alarming in what amounts to quasi-criminal matters. There is no question that officers and directors should have duties and responsibilities for the operation of their company, but they should also have access to the norms of Canadian justice.

We therefore suggest that subsection 194(2.1) of the Environmental Protection Act and subsection 116(2.1) of the Ontario Water Resources Act, dealing with "failing to take all reasonable care," as it pertains to preventing a corporation from committing certain offences, should be deleted. That's only with regard to the reverse onus.

The Occupational Health and Safety Act, which of course, we all subscribe to, appears to function very well, and it includes a similar requirement for officers and directors in section 32, but it does not involve a reverse onus. We therefore believe that removing the reverse onus in these areas will not adversely affect the bill. We believe removal of the reverse onus will also send a positive signal to directors and potential directors who are or could be instrumental in creating investment in Ontario.

A third area of concern relates to the provincial officers' orders. By allowing these orders in any case where an EP could be issued relative to a section 14 contravention, the "may cause" threshold applies. Given that reverse onus will still apply in relation to EPs, this wording would make it very difficult, if not impossible—probably impossible—for the recipient of such an order ever to be successful in an appeal. Many of the serious problems associated with the wording change from "likely to cause" to "may cause" were addressed in the amendments proposed by the minister and adopted by this committee. In our opinion, this issue falls into the category of unintended consequences, and we believe it would improve the bill to delete clause 157(1.1)(a).

Finally, coalition members have great difficulty with the definition of "deemed impairment," as was alluded to earlier by Mr. Hodgson, in section 1 of the OWRA. The addition of clause (e)—peer-reviewed articles as proof of impairment—significantly changes the evidentiary issues in relation to "deemed impairment." Here again, we believe there is an unintended consequence in that anyone, with or without expertise or authority, could use this definition for their own purposes in a fashion not necessarily consistent with government policy, because, of course, there are such things as private prosecutions.

Ten minutes isn't a great deal of time in which to make the case for issues of great significance to the tens of thousands of our member companies, their millions of employees and the billions in investment that they represent, but we hope that we have approached this process in a genuine collaborative search for better ways to implement the intent of the legislation. We thank you for your time and your courtesy.

The Chair: Thank you. Almost to the second, that's your time. Your timing is impeccable. Thank you for coming in this morning.

Dr. Surplis: Thank you, sir.

GREAT LAKES UNITED

The Chair: Great Lakes United, please. You've followed the deliberations of the committee very closely, so you pretty much know the ground rules. State your name for the purposes of Hansard, and please begin.

Ms. Jessica Ginsburg: Thank you very much. My name is Jessica Ginsburg, and I am here today on behalf of Great Lakes United. Great Lakes United is a coalition of organizations which includes environmental groups, labour groups and community groups across Canada and the United States. Great Lakes United was founded in 1982 and is dedicated to the promotion of clean water and air and the protection of human and environmental health.

Great Lakes United generally supports this bill, as amended. Although there have been some disappointing changes made since first reading, there have also been some promising additions made in response to stakeholder feedback. Thus, the bill is viewed as a positive step toward greater environmental protection and accountability for spills and other discharges.

When I spoke to this committee previously on the importance of Bill 133, I focused my comments on the changed threshold from "likely" to "may" under the Environmental Protection Act and the new "deemed impairment" provision under the Ontario Water Resources Act. I expressed the view that these provisions created more protective and enforceable thresholds for establishing contraventions under both acts. Subsequent amendments to the bill have unfortunately eroded the use of the "may" threshold; now provisions governing prosecutions and several types of orders, such as control orders and remedial orders, have reinserted the "likely" threshold.

However, the "deemed impairment" provision of the Ontario Water Resources Act has happily remained relatively intact, and I urge you to maintain its current wording. The "deemed impairment" provision will allow the crown to prosecute when a discharge has the potential to cause harm. Without it, the crown effectively needs evidence of actual harm, such as dead fish remains washing up on shore or high concentrations of contaminants, before it can move forward with a case.

This sort of evidence can be extremely difficult for the Ministry of the Environment to collect, given the fact that such material could wash away or become diluted by the time inspectors can respond to a spill. Indeed, the Ontario Water Resources Act was never intended to require such extensive evidence; it was only due to a court decision four years ago that the threshold was elevated to this unrealistic level. The new "deemed impairment" provision is critical to ensuring that the act is once again able to be used in the way it was originally intended: as a zero-tolerance piece of legislation akin to the Fisheries Act.

Great Lakes United also applauds several other amendments which will heighten transparency and public accountability. For instance, provisions have been added to both the Environmental Protection Act and the Ontario Water Resources Act which require the ministry to publish settlement agreements on environmental penalties on the Environmental Bill of Rights registry. These provisions respond to concerns about public accountability that were expressed by numerous environmental groups, including Environmental Defence, the Canadian Environmental Law Association and the Sierra Legal Defence Fund. The EBR postings will alert the public to the existence of such settlement agreements and help to dispel the perception that backroom deals are taking place in which penalties are being unfairly or unreasonably diluted. Ideally, the agreements will be designated as instruments under the registry and subject to appeal.

Similarly, Great Lakes United strongly supports amendments which provide for the publication of an annual report on the use of environmental penalties. The report would set out such information as the amount of the penalties issued, the type of contraventions to which they relate and the nature of subsequent settlement agreements.

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This will help to ensure that environmental penalties remain robust instruments and that public confidence in their use is maintained. It will also provide greater predictability for both industry and the public, as correlations are drawn between the amount of the penalties issued and the existence of various mitigating factors, as prescribed by the regulations. Hopefully, the report will also help to alleviate industry concerns that environmental leaders and laggards are being treated in an identical manner.

Public accountability is further advanced by the inclusion of a five-year review mechanism in both acts. This type of study will allow the environmental penalty

regime to be reviewed in broader terms, and allow its effectiveness to be gauged relative to and in concert with prosecutions. Importantly, the review could provide recommendations on such topics as how environmental penalties can be applied in a fair and transparent manner and how prosecutions can be maintained in the face of a growing reliance on penalties.

Another useful addition to the bill is found in subsection 1(13.1), which requires the development and implementation of spill prevention and spill contingency plans for prescribed classes of persons. This augments the amendment found at subsection 1(8), in which directors are given the authority to order specific property owners or managers to develop and implement these plans. It is hoped that these provisions will be applied to all those covered by the bill and, ideally, expanded to include non-MISA facilities in the near future.

Many stakeholders across a broad range of interests called for a greater emphasis on spill prevention in Bill 133. If liberally applied, these provisions could be very instrumental in curtailing the rampant pollution problems which exist in this province. Bill 133, as it is currently drafted, is an important and necessary step toward effective government oversight of potential polluters.

During these hearings, this committee has been presented with ample evidence of Ontario's worsening pollution problem. Although there are several reasons for the predicament we now find ourselves in, one of the leading contenders is likely the high level of non-compliance which exists in certain industrial sectors. By strengthening our penalty and prosecution regimes, the Ministry of the Environment will be better able to fulfill its mandate and perform its operations in as effective and efficient a manner as possible. For this reason, Great Lakes United wishes to express its support for the overall direction taken by this bill, and urge you to maintain its necessary and long overdue measures without further amendment. Thank you very much.

The Chair: And thank you very much. That pretty much concludes the time that you have available this morning, so thank you again for coming in for your deputation.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Chair: Canadian Environmental Law Association, please. Please be seated and make yourself comfortable. You have 10 minutes before us today. If you don't use the entire time, we'll divide it among the parties for questions. Please begin by stating your names for Hansard and then proceed.

Mr. Paul Muldoon: Good morning. My name is Paul Muldoon. I'm the executive director and counsel of the Canadian Environmental Law Association. To my right is Ramani Nadarajah. She is counsel at the Canadian Environmental Law Association.

The Canadian Environmental Law Association has had the opportunity to review the amendments to Bill

133, and we are strongly in favour of the bill. We have some concerns, which my colleague Ms. Nadarajah will address, but I would like to make one or two quick opening remarks.

First of all, we'd like to thank you for your work in ensuring the bill has been strengthened in many ways. The inclusion of spill prevention plans, the making of the settlement agreements public and the annual reports are just a few examples of where, in our view, you have heard the public and have responded appropriately.

I'd like to make two further points. One is that, in my last deputation here, I attempted to bring remedies to show that this is not an academic or esoteric problem. The Ontario environment is being degraded every day by spills. It causes not only environmental problems, but human health problems. So we urge you to carry on with this bill as quickly as possible. The environment and public health demand it. Further, in our view, the government has bent over backwards to accommodate industry thus far. You have done everything in your power as a committee and as a government to appease the very sector that is causing the problem. In our view, the line is in the sand. Get on with the bill and get it passed.

We do, though, urge you to think about a few of the amendments that have been put forth. I would ask my colleague Ms. Nadarajah to address those issues. I'd just like to mention that Ms. Nadarajah was a prosecutor for over five years at the Ministry of the Environment and has built a reputation of expertise in this area.

Ms. Ramani Nadarajah: Thank you, Paul. I wish to focus on three key aspects of this bill that, in my view, are very significant.

As Paul has mentioned, the first issue deals with the deemed impairment provisions. CELA was very pleased that the deemed impairment provisions of the Ontario Water Resources Act were strengthened through the government amendments. We believe that this provision ensures that dilution will no longer be a defence to water pollution in Ontario. I would also add that this provision is very important if we are to ensure source water protection in Ontario, and that was a key recommendation of Mr. Justice O'Connor in his part 2 report of the Walkerton inquiry.

CELA also supports the use of the environmental penalty regime proposed in Bill 133. Environmental penalties have been adopted in other jurisdictions such as the United States and British Columbia. Environmental penalties provide a very expeditious means of dealing with environmental offences. It is CELA's view that the bill needs to be phased to ensure that the environmental penalty regime applies to all companies that may cause spills in Ontario.

The final issue I wish to address deals with the legal threshold for proving environmental offences. CELA was disappointed to learn that the government amendments did not follow through with the proposal in the initial bill to change the legal threshold for environmental offences. Currently, under section 14 of the Environmental Protection Act, in order to obtain a conviction for discharge

of a contaminant, the crown has to prove that the discharge “caused or is likely to cause an adverse effect.” In terms of a legal threshold, the courts have interpreted this as requiring proof over 50 per cent.

Bill 133 had proposed that the wording of section 14 of the Environmental Protection Act be changed to “may cause an adverse effect” instead. This would have reduced the legal threshold required for ministry prosecutors to secure a conviction for environmental offences. It is important to note that the use of the word “may” is consistent with the legal threshold for proving water pollution offences. Under the Ontario Water Resources Act, the crown only has to prove that the discharge of a contaminant “may” impair water. Thus the benefit of the proposed change in the initial bill was that all discharges to the environment, whether to air, land or water, would be treated consistently in terms of prosecution.

The government amendment to Bill 133, however, limits the applicability of the “may” threshold under section 14 of the Environmental Protection Act. For prosecutions, unfortunately, it appears that the government has reverted back to the old standard, as it exists under the current act. In CELA’s view, there is no legal rationale for the government to treat air pollution or land pollution any less seriously than water pollution. We think this amendment is a step backward for the government.

However, CELA’s overall view is that Bill 133 strengthens environmental protection in the province. We believe it is a very significant government initiative and urge you to adopt it as soon as possible. I would caution, however, that CELA’s support is contingent on there being no further government amendments that would weaken any of the provisions of this bill or reduce its applicability to business operations in Ontario.

Those are my submissions, subject to any questions.

The Chair: Thank you very much. We should have an opportunity for one question per caucus, beginning with Mr. Wilkinson.

1040

Mr. Wilkinson: Thank you for coming in. We appreciate the fact that you’ve been so active on this file for a number of months, as we’ve sorted our way through it.

The question that I have to deal with is just back on this “deemed” disposition under the OWRA. I don’t know if you heard, but some of the people who spoke before mentioned the idea that this would have a perverse effect in the mining industry, where they’re trying to reduce the amount of water they use by recycling. They could be, by default, somehow contravening the act because they’re trying to do the environmentally friendly thing, but the water they’re using could just have natural trace metals. As someone who’s a former prosecutor, can you help me sort through the rationale, and why you’re in favour of the fact that we’ve strengthened that?

Ms. Nadarajah: Certainly. I did hear the submissions by the Ontario Mining Association and others with respect to the deemed impairment permission. I think it’s important to note that the problem began in 2001 with an

Ontario Court of Appeals case called *R. v. Inco*. In that case, the court held that in order to secure a conviction under the Ontario Water Resources Act for pollution, the crown would have to prove that the nature and circumstances of the discharge caused impairment or had the potential to cause impairment. This would require the crown to prove that the quantity of the material discharged, the concentration and the duration were such that it could cause water impairment.

The Inco case created a major loophole for water pollution laws in Ontario. The reason for this is that most contaminants, when they are discharged into water, will dilute. So by the time the ministry investigators become aware of the discharge and are able to attend at the scene, much of the evidence will have disappeared. It would make it difficult if not virtually impossible to secure a conviction. So currently in Ontario, we have a major loophole—I would say it’s a gaping hole—with respect to water pollution laws. This bill fixes that.

Mr. Barrett: Thank you to the Canadian Environmental Law Association. You mentioned that, in CELA’s view, there is no legal rationale to treat air pollution differently from water pollution or pollution to the land. Is there an issue at all with the fact that MISA companies have now become the focus of this legislation and not other companies?

Secondly—I don’t know whether it relates—Justice O’Connor and source water protection: That legislation was promised last year. We aren’t going to get it in this session; I don’t think we’ll get it this week. Again, should distinctions be made on source water protection? Should it not apply just to MISA companies? I just wonder if you could comment on that.

Ms. Nadarajah: Obviously not. I feel absolutely hopeful that the government will follow through on the source water protection. That was one of the key recommendations of Mr. Justice O’Connor. But there is no reason, from our standpoint, why you would want to limit that to MISA facilities. While they may in fact, as I think Minister Dombrowsky mentioned, be the major cause of spills in Ontario, the reality is that small companies as well cause spills into the environment. It’s not just the quantity of spills; I would submit that you need to focus on the type of contaminants that are spilled as well. Our hope would be that this bill would apply to all companies operating in Ontario that have the potential to cause spills.

Mr. Barrett: Bill 133 or source water protection?

Ms. Nadarajah: Both.

Mr. Marchese: You’ve answered two questions that I had in mind that both would have been brief. My last question: Do you anticipate any changes today by way of amendments?

Ms. Nadarajah: We would certainly hope not. As I indicated, our support of this bill is contingent on there being no further government amendments which would weaken any of its provisions.

The Chair: Thank you very much for coming in today.

CANADIAN MANUFACTURERS AND EXPORTERS

The Chair: Canadian Manufacturers and Exporters. Good morning and welcome. You have 10 minutes today. If you leave any time remaining, we'll use it for questions divided among the parties. Please begin by stating your name for the purposes of Hansard, and continue.

Ms. Nancy Coulas: Hi. I'm Nancy Coulas, and beside me is Lisa Kozma. We represent Canadian Manufacturers and Exporters. We were pleased to have the opportunity to present to this committee on May 16, and I'd refer you to our submission dated May 16 for general information about our organization and for information about our major concerns with Bill 133, as it was written prior to first reading.

CME has had the opportunity to review the amended version of Bill 133 and we're pleased that the government has dealt with and clarified a number of unintended consequences of the bill. We appreciate the efforts of this committee in that respect. However, some serious issues remain. We're pleased to have the opportunity today to outline these matters with the committee.

One of the most significant outstanding concerns CME has with the bill is regarding the application of a reverse onus to prosecutions of directors and officers where there could be significant fines and jail terms. This is a matter of fundamental civil liberties. The principle that has guided legislators in Canada throughout the years is that where an accused faces serious penalties, including incarceration, the crown should bear the burden of proof. Removing this reverse onus from the bill would in no way detract from the basic principles that underlie the bill, but it would bring it more closely into line with Canadian legal tradition.

If this issue is viewed as a policy issue, as opposed to a question of legal interpretation, CME is concerned that this is a policy issue that has application far beyond the Ministry of the Environment and the bill that is currently before this committee. For example, the Ontario Occupational Health and Safety Act contains an analogous duty for officers and directors of a corporation, but this piece of legislation does not specify a reverse onus.

The bill clearly expands the existing duty of directors and officers with respect to environmental matters. Removal of the reverse onus clause would not detract from the positive effects of the proposed bill.

Below is a summary of the key outstanding issues that CME would like to raise with respect to Bill 133. We believe the amendments suggested below are essentially technical in nature and do not undermine the substance of the bill. They are, however, of serious consequence to CME members.

The first issue we have is reverse onus on appeals of provincial officer orders relating to discharges, section 145 of the Environmental Protection Act and section 102 of the Ontario Water Resources Act.

The bill still proposes that a reverse onus apply to both the appeal of environmental penalties and the appeal of

provincial officer orders relating to discharges. This reverse onus for appeal of provincial officer orders may have some unintended consequences. Under the currently proposed wording, the appellant of a provincial officer order relating to discharges would still have the obligation to prove certain matters that, but for Bill 133, would be the obligation of the provincial officer to prove. The effect, where the "may" threshold applies to such orders, would be to make it very difficult for industry to appeal orders which require the implementation of expensive alteration to plant and equipment where such orders "may, or may not" have any positive environmental impact. CME proposes eliminating subclause (ii) of the proposed section 145 of the EPA and section 102 of the Ontario Water Resources Act, and thus the reverse onus would apply only to environmental penalties.

The second issue is reverse onus for directors and officers under section 194 of the EPA and section 116 of the Ontario Water Resources Act.

As we noted earlier, the bill proposes that directors and officers should have the onus of proving that they took all reasonable care to prevent the corporation from committing certain offences. The failure to take all reasonable care on the part of a director or officer is the very core of the offence created under section 194 and is therefore a reverse onus. Such a specific reverse onus is of particular concern in a quasi-criminal matter that may attract both significant fines and jail sentences. CME proposes deleting the proposed subsection 194(2.1) of the Environmental Protection Act and subsection 116(2.1) of the Ontario Water Resources Act. The environmental duty of directors and officers has been expanded by the bill. The reverse onus should remain a legal matter to be determined by the courts. The deletion of the reverse onus will not detract from meeting the policy objectives of the bill.

The third issue: The "may" versus "likely" threshold in provincial officer orders in relation to section 14 contraventions of the Environmental Protection Act, section 157. By allowing provincial officer orders to be issued in any case where an environmental penalty could be issued in respect of a section 14 contravention, the "may cause" threshold effectively applies to provincial officer orders, but only for regulated persons. This therefore creates a two-tiered approach to environmental regulation, with different thresholds applying to different parties. With the reverse onus referred to in the first item, it makes it effectively impossible for the recipient of such an order to be successful in an appeal of such an order.

CME recommends deleting clause (a) of subsection 157(1.1). Alteration to plant and equipment should only be required by provincial officer order where such an alteration is to prevent discharges that cause or are likely to cause an adverse effect, not discharges that may cause an adverse effect.

Fourth issue: changes proposed to the definition of "deemed impairment" in section 1 of the Ontario Water Resources Act. Two paragraphs of the definition of "deemed impairment" were changed by the government

motions and are therefore a new concern for CME. While the definition of “deemed impairment” is very broad, the addition of clause (e), regarding peer-reviewed articles as proof of impairment, to the definition is particularly disturbing. It significantly changes the evidentiary issues in relation to deemed impairment. While this amendment may have been intended to create greater scientific certainty, it appears to have the potential for the unintended consequence of doing the reverse. Any peer-reviewed article from any jurisdiction—notwithstanding other, more current information or perhaps other peer-reviewed articles to the contrary—could potentially be used to determine impairment. CME recommends this paragraph be deleted.

Thank you again for the opportunity for CME to present its views on these important issues. We appreciate the efforts of this committee to make improvements to Bill 133, and we hope the committee will take advantage of this opportunity to make further improvements that will bring the legislation into closer alignment with Canadian legal tradition. As an integral part of the communities in which we live and work, CME and our member companies fully support protecting Ontario’s environment, and we appreciate this opportunity to share our views with you.

The Chair: We should have time for one question.

Mr. Barrett: I wish to thank Canadian Manufacturers and Exporters for your participation and the work that you have been doing on this.

This winter, I was getting phone calls about this legislation. I remember one call where the owner of a company phoned me. He was involved in environmental industries, taking in plastic and solving environmental problems, but his concern was where this would leave his company. Most of the stuff he brings in comes from Ohio. He said he could do this just as easily in Ohio, and was suggesting, the way it was going originally, that this would be something he would consider. Do you feel that, with the many amendments, this bill is coming around now; that it would not, at minimum, create any kind of competitive disadvantage, say with the state of Ohio or with Michigan, a US jurisdiction? Any comparison with what’s going on across the border as far as this kind of legislation is concerned?

Ms. Lisa Kozma: It’s difficult to speak to that issue right now, because a lot of the substantive matters in this bill are going to be addressed in regulation, particularly when we deal with the environmental penalty provisions. I guess, at this stage, we’re hoping we can work effectively with all the other stakeholders to come up with an environmental penalty regime that does in fact create certainty for business. I would say that one of the major issues was the “may” threshold as applied to the Environmental Protection Act and the concern among industry that this would create great uncertainty as to what the threshold actually was. The government and this committee have made efforts to address that issue. Aside from the two points we brought up here—the reverse onus and the “may” threshold for provincial officer orders—I think those issues have largely been addressed.

The Chair: Thank you for coming in with your deputation this morning.

Ontario Bar Association, environmental law section, please.

Mr. Marchese: Nobody’s here.

The Chair: Ontario College of Family Physicians: Are they here?

This committee will stand in recess for 10 minutes. We’ll reconvene shortly before 11:05 for the Ontario College of Family Physicians.

The committee recessed from 1055 to 1116.

ONTARIO COLLEGE OF
FAMILY PHYSICIANS

The Chair: The committee will reconvene and come to order.

Welcome. I hope you had a pleasant ride here.

Dr. Riina Bray: Don’t get me started. I couldn’t park the car. That’s why I’m late. I’m sorry.

The Chair: Take your time; catch your breath. You have 10 minutes before us today. Begin by stating your name for the purposes of Hansard and proceed.

Dr. Bray: My name is Riina Bray. I’m a family physician, assistant professor at the Environmental Health Clinic at Sunnybrook and Women’s College Health Sciences Centre. I’m also chair of the environmental health committee at the Ontario College of Family Physicians.

I much appreciate the opportunity today to address this committee on the important issue of Bill 133.

In its final report on spills, the government’s Industrial Pollution Action Team dispelled any myths about Ontario’s international leadership in this arena by concluding, “It was our impression that Ontario’s regulatory system has not kept pace with progressive jurisdictions elsewhere in the world, which employ a more diverse management tool kit and a risk-based approach.”

The action team’s report also stated that there is a need for substantive change in Ontario’s environmental management framework, and that “despite its best intentions, the current system does not encourage pollution or spills prevention.”

These spills are often referred to as “environmental contaminants,” but please remember that they are also human contaminants. Physicians tend not to use such terms, so I’d like to speak plainly about the topic at hand. What we’re talking about in most cases here are poisons, and it’s important not to forget that.

In his submission to this committee, Dr. David Colby, the medical officer of health for Chatham–Kent, told you that Bill 133 is essential to improving the health and safety of his community. There is certainly an immediate impact on southwestern Ontario because of the preponderance of spills, but this bill affects or has the potential to affect our patients throughout the province.

Much has been made of the inequitable financial burden that environmental penalties place on industrial facilities, but although physicians’ primary interest is in

the health of our patients, it is important for you to know that there are two sides to this cost argument as well.

As the action team's report stated, "Downstream communities are not recouping the full costs of spills."

When public health warnings such as boil-water advisories are issued, expenses are immediately incurred. Even when there are no such warnings, parents, concerned for their children's well-being, take precautionary measures, like drinking only bottled water, when there is news of a spill or when spills are frequent. They too incur immediate costs. It is also likely that a populace more fearful of environmental contamination is more costly to government because they more frequently seek medical attention from their physicians and other health care providers.

In addition to this, there's a huge hidden cost that will present itself later on with the impact of contaminants on unborn children, pregnant women and young children who experience exposures which can manifest later with neuro-behavioural problems, costing billions of dollars to the nation. This has been shown in many scientific reports that are available.

Also, cancers from chronic exposure to contaminants in the young and in the old obviously pose a huge health care cost to our country.

Also, we must consider the immuno-compromised, the infirm, the elderly and those suffering from reproductive problems, and the link that has been shown there with contaminants.

On the topic of added governmental costs, it is certainly the case that significant improvements to spills notification systems and response systems, which have predictive capacities to identify specific public health vulnerabilities, all cost a lot of money, too.

Tracking health threats once they exist is absolutely important, but it is certainly better and cheaper to prevent spills in the first place. I learned a long time ago that preventive medicine is a much healthier approach than waiting to develop a treatment strategy once the threat has been introduced, be it a disease or a chemical contaminant. It's also much cheaper.

Honourable committee members, we understand that the government is required to balance the interests of many when making legislative decisions. Just to clarify, that is not to say that we think health interests are special interests, as some would suggest; although it is my view that health interests should be treated more specially than some industrial interests.

To the business at hand: It is obvious that some companies are not complying with Ontario's environmental laws. As well as threatening their surrounding communities and potentially those far downstream, this non-compliance gives the lawbreakers an unfair advantage over their competitors who do comply. Environmental penalties send the message to those who haven't gotten it yet that compliance is the bare minimum of acceptability and that there is a cost and a consequence for not living up to the law.

As a physician, I cannot claim to be an expert in legal compliance issues, but it is clear to me that enforcing

compliance is a move in the right direction toward protecting the health of our patients.

We think that the current amendments to Bill 133 from the second reading last week are a reasonable balance of interests, and I would like to support the bill in its amended form.

As Dr. Colby reminded this committee, spills cannot be the cost of doing business; protecting the health of Ontarians must come first.

Thank you for the opportunity to speak today.

The Chair: Thank you for coming in. We should have an opportunity for a question from each caucus to you, beginning with Mr. Marchese.

Mr. Marchese: Thank you, Dr. Bray, for coming.

The Chair: Mrs. Van Bommel.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you, Chair, and thank you for coming in. I hope that you catch your breath. You still sound a bit out of breath.

You mentioned the Industrial Pollution Action Team and the recommendations that they made. One of the things that we've heard since then are concerns that industries in the Sarnia area have expressed about having to comply and the comments that they've made about having to leave the area if they have to comply with certain restrictions. They're talking about moving to other jurisdictions, including other provinces in Canada. With that comes the concerns about jobs. How would you address that kind of thing?

Dr. Bray: I get a lot of dialogue coming from Sarnia with regard to environmental contaminants and illness and disease. If they want to move elsewhere, then kudos to them.

I think we need to think of the health care costs, because if you look at the epidemiology right now and the illness that is hitting Sarnia—I don't know if you know, but Sarnia is it's a particularly sick community. We get patients who are very, very disabled coming from that area. There are studies showing that childhood illness and cancers are much higher geographically than the rest of Ontario. It's a sick community, and I would say that, dollar for dollar, you're going to save money in the end.

Jobs are important, but when you think of the future generations and the unborn etc., I really don't think we should be making a comparison there. If you want to, I would say that I think we need to put the health of people first, and jobs will come second. Otherwise, people are going to have jobs and then they'll have to go on disability or they're going to lose loved ones. The cost of suffering is going to be huge. There have to be alternatives for them.

The Chair: Thank you very much. Mr. Miller.

Mr. Miller: Thank you for coming in today. You mentioned at the beginning of your talk, the report of the Industrial Pollution Action Team. In that report it said, "Despite its best intentions, the current system does not encourage pollution or spills prevention, or the regular updating of technology and operating systems."

I think that you also went on to say that you believe in preventive medicine, if I heard you correctly.

We've also heard from industry here today that they would like to see more science-based and risk-based provisions in this bill.

Do you think we should be doing more to encourage spills prevention and pollution prevention plans?

Dr. Bray: Yes, I do. I think you can do more studies, I think more studies are always warranted, but you have to be careful and consider the precautionary principle. It doesn't require too much thought when you have a mass balance and you look at what's going into the environment. It has to go somewhere, and you just sort of follow it through.

I think that scientific investigation shouldn't be an excuse to continue doing what they're doing. It shouldn't be something that prevents them from making the correction sooner than later. I think of the precautionary principle again here.

The Chair: Thank you very much for coming in. I'm sorry that you had a wicked commute, but you did have the last word today.

Dr. Bray: Thank you, and I hope I've been helpful.

The Chair: This committee stands in recess until clause-by-clause consideration of Bill 133 today at 4 p.m. in this room.

The committee recessed from 1127 to 1602.

The Chair: Good afternoon and welcome back from our recess. This is the standing committee on the Legislative Assembly. We're here for the consideration of Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters.

Just before we get to our very full agenda with the clause-by-clause, are there any motions?

Mr. Miller: Mr. Chair, I have a motion.

I move that the subcommittee on committee business be authorized to consider and approve the attendance of a committee delegation at the 2005 annual meeting of the National Conference of State Legislatures, subject to budgetary approval; and further, that the subcommittee be authorized to approve a committee budget for submission to the Speaker and the Board of Internal Economy for their approval.

The Chair: Discussion? Carried? It's carried.

The standard question that the Chair is required to ask: Are there any comments, questions or amendments to any section of the bill and, if so, to which section?

Mr. Barrett: By way of comment, we have before us not the original version of Bill 133. In hearing testimony and listening to debate on Thursday afternoon on second reading, I would think that people concerned—environmental groups, industry coalitions—would see some changes that they would approve of and some that they would be disappointed in. I think that stakeholders and people who have testified would feel that their concerns are not so much about penalties or the principle that those organizations or companies that do pollute or spill should pay. No one argues against that; that's a motherhood

issue. The industry does not argue against that, or other organizations. The PC opposition does not argue against that.

Our Minister of the Environment, in Thursday's second reading debate, said, "We believe that if the private sector spills, they should pay for its cleanup, not the taxpayers of Ontario." She went on to say, "Obviously, the opposition is in favour of polluters." I don't know where that comes from, because everyone agrees, including the opposition, that the polluter pays. The concern is, when do you pay? Under what conditions? Where is the evidence? Do you pay just when government asks you to pay, regardless of any best practices that have been followed by the organization, or regardless of the impact on the environment or any scientific measure of the impact on the environment?

Certainly, the regret continues that the original bill was introduced without any meaningful consultation. It has become divisive. For some, it is seen as being antagonistic. For others, it's seen as disappointing at best. There is regret that there was not a gathering around the table, if you will, a search for some common ground very early in the game or, at minimum, at any time, say a year and a half ago, when the spills on the St. Clair first triggered and caused this reaction seen in this legislation.

I do acknowledge that some stakeholders have indicated to me that they appreciate the efforts of this committee. They have made it clear, even at this date, and we heard this this morning, that there are some serious issues that remain. This is not the kind of legislation that they envisioned would come out of a response to a need to have a better way to not only deal with spills after the fact—that one's fairly clear cut—but a better way to prevent spills from happening in the first place, to monitor spills and to have better systems in place for rapid response and remediation.

To my mind, in my discussions over the last several months, people agree polluters must pay. They're just asking for legislation that would be workable and is in the best interests of everyone, whether they've taken sides on the environmental side or the industrial side, something that works for people in the province of Ontario.

The Chair: Any further comments before we go into clause-by-clause consideration?

Mr. Wilkinson: I just want to put on the record how much the government appreciates, in this process on Bill 133—we took a step which I think has been unusual in the past but hopefully will be used more in the future, where we take a substantive bill like this and get it out to committee after first reading. I think we'll all be glad to say, at the end of the day, that the bill has been substantially improved by working together collaboratively.

Mr. Marchese: I hope this practice doesn't happen too often. In fact, I'll be speaking to that in the Legislature when we debate third reading of this bill. I think that when you introduce a bill and you have consultations with people, you then introduce the best possible bill you can, after those consultations. To introduce a bill with

consultations, then move it from first reading to second reading in committee to hear people again, make amendments and bring it back for third reading, hearing people again and making other amendments—in this case there are no amendments, other than this one amendment the Conservatives are bringing forth. It's just a problemo, in my view. I don't recommend it as a process. I hope it never happens again.

The Chair: Thank you all for your comments. The Chair observes that the goodwill and the high degree of decorum throughout the hearings by all parties and by the deponents, and certainly throughout the clause-by-clause, has made the process, at least, a pleasure to conduct.

Shall we consider section 1? There have been no amendments proposed to section 1. Shall section 1 carry? Carried.

Are there any amendments to section 2?

Mr. Barrett: There is. Committee, I do have an amendment on page 44(e) and I do have the amendment. Is this the appropriate time to go to page 44?

Interjection: It's your big moment.

Mr. Barrett: I just want to make sure. It's a PC motion.

I move that clause 1(3)(e) of the Ontario Water Resources Act, as set out in subsection (2) of the bill, as the bill was amended after first reading, be struck out.

By way of discussion, this morning we actually received input. There was some commonality of concern amongst not only the Canadian Manufacturers and Exporters but also the Ontario Mining Association. We also received concerns from the Coalition for a Sustainable Environment. For example, the Canadian Manufacturers and Exporters indicated there are two paragraphs of the definition of "deemed impairment" that were changed by government motions and are therefore a new concern:

"While the definition of 'deemed impairment' is very broad, the addition of paragraph (e)"—which the committee will see on page 44—"('peer-reviewed articles as proof of impairment') to the definition is particularly disturbing and it significantly changes the evidentiary issues in relation to 'deemed impairment.' While this amendment may have been intended to create greater scientific certainty, it appears to have the potential for the unintended consequence of doing the reverse. Any peer-reviewed article from any jurisdiction, notwithstanding other more current information or perhaps other peer-reviewed articles to the contrary, could potentially be used to determine impairment."

That was one organization that recommended that that paragraph be deleted.

Dr. Surplis this morning addressed the issue as well, and just give me a second. I know they had a number of concerns and in the short time available today we decided to focus on this one just because there were at least three organizations as late as this morning that asked that this be dealt with.

The coalition also, as they say, has great difficulty with this definition of "deemed impairment," and here again, they believe that it has "unintended consequence

in that anyone, with or without expertise or authority, could use this definition for their own purposes in a fashion not at all consistent with government policy."

We also know that on both days of testimony the Ontario Mining Association presented their concerns on this. I don't know whether Mr. Miller wants to address that issue.

Mr. Miller: Certainly. We did hear from a number of groups this morning that had concerns with the definition of "deemed impairment" and, as has been pointed out, there may be some unintended consequences with the way it is currently put forward. That is why, in the short time that we've had since this morning, we have this amendment to delete that one clause from the bill. I would simply like to say that I believe the Ontario Mining Association would like you to go further than that, but in the short time frame we have had from noon until now, we really haven't had enough time to make further amendments. But the Ontario Mining Association is concerned that this definition of "deemed impairment" could have consequences for the mining industry, where other waters could be considered to be discharges.

So I think further study of this, as it relates to mining, is necessary, and we just haven't had time in the short time since noon to make further amendments to address some of the concerns of the mining industry.

Mr. Barrett: Further to that, Chair, I know that not only this morning, but in previous testimony which was by Chris Hodgson, as I recall, of the mining association, they were concerned that the definition of "deemed impairment" is much more stringent than the existing wording.

The proposed wording would include the test for any organism, whether or not that organism lives in the habitat. In essence, it appears that the government is trying to say that even the discharge of non-inherently toxic substances will be prohibited. They feel that this is impractical, certainly specifically within the mining industry, and argue that the general public would understand that it's impossible to implement in the real world and, by extension, unnecessary to implement in the real world.

They give the example of how it's problematic. Just for their industry, every bit of seepage from a rock pile could be considered an offence, because it would contain metal. There would be no consideration as to whether or not the seepage could or would cause an adverse effect. I think they're indicating that that's part of the nature of mining and searching for metal.

The Chair: Further questions and comments?

Mr. Wilkinson: In regard to the amendment, I find it somewhat incomprehensible. I'm just confused here. We went through the whole process about review of this bill, and industry was very, very clear to us that the current clause (e), as proposed, did not clearly define "science."

If I remember correctly—and this is the motion that we struck down—it was to have said, in regard to deemed impairment:

“(e) the material or derivative may cause injury to or interference with any living organism in any water.”

That was amended by us, after listening to industry, to “peer-reviewed scientific publications indicate that the material or derivative causes injury to or interference with organisms that are dependent on aquatic ecosystems.”

We amended this bill, listening to industry, by saying, “That’s much too broad. If you’re going to talk about science, then define science.” A reasonable definition of “science,” it’s my understanding, from a judicial point of view, is things that are peer-reviewed, because they are actual science. In the peer-review process, you don’t just write a paper, you don’t get to publish it unless it’s been reviewed by your peers to make sure that they agree—they may not agree with the premise—that the scientific method that was applied to it was correct.

Now I’m really confused, because I thought that we did a good job by making sure that things would be peer-reviewed, and now we have an amendment from the opposition that says, “Let’s just strike out (e). Forget about (d) and (f), because they had concerns about that as well. We’re just going to take out that scientific basis.” It strikes me that that would substantially weaken the bill in regard to deemed impairment.

As we heard from Ms. Ginsburg, in the case of the Ontario Water Resources Act, prior to the Bata case, this was not an issue. What Ms. Ginsburg talked about was the fact that if something is spilled in the water, the evidence is diluted, the evidence doesn’t exist.

As we’ve said in our bill, the person who is responsible for knowing what is discharged would be the company. The question then comes down, in my opinion, to what is a reasonable test? This is all about going back to the status quo before Bata, and it is about making sure, by setting that standard, that it is one based on science.

1620

I have no doubt that a judge—we don’t just let anybody be a judge—could look at the evidence and be able to weigh peer-reviewed science in his or her determination of this case. We’ve decided in our society that that is who gets to decide these matters. So we are in agreement with our amended motion and will be voting against this amendment.

The Chair: Further questions and comments?

Mr. Miller: I would just like to point out to the parliamentary assistant that point (d) of the amendments does still include a scientific test: “(d) a scientific test that is generally accepted as a test of aquatic toxicity indicates that the material or derivative, in diluted or undiluted form, is toxic.” So that scientific test still exists.

As was pointed out by the groups that came before us this morning, they’re concerned that any peer review or article from any jurisdiction, notwithstanding other more current information or perhaps other peer-reviewed articles to the contrary, could potentially be used to determine impairment, and they’re concerned that it could actually be used in a way that doesn’t establish the science.

Mr. Wilkinson: I would leave it in the good hands of the judge to decide what is the most current science which has been peer-reviewed. Really, the Legislature is giving him or her direction as to how to make that judgment.

Mr. Marchese: I agree with John. Let’s go for the vote.

The Chair: Shall the amendment carry? All those in favour? Those opposed? I declare the amendment lost.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall section 4 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 133 carry? All those in favour of the carrying of Bill 133? Those opposed? Carried.

Shall I report the bill to the House?

Mr. Miller: Excuse me. I just wanted to get on the record the fact that many of the groups that have come before us have asked that there be some way that they can review the regulations as this bill goes forward, because a lot of the detail certainly will be in the regulations. I think it’s a flaw in the process, in many cases, with many of our bills, in that the bill passes but most of the detail is in regulations and those most affected by the regulations don’t necessarily get to give their input. I note that many of the groups—certainly business—said that they would like some opportunity to make comment on the regulations.

Mr. Marchese: I wonder whether Mr. Miller agrees that the environmental groups should be part of that consultation, in the event that they do that.

Mr. Miller: Yes, I totally agree.

Mr. Wilkinson: Again, just for the record, of course in Ontario, in our jurisdiction, we have the Environmental Bill of Rights registry. Any regulation contemplated by the government—no matter what the government of the day—has to be posted, and there is a consultation process there. But I do take the suggestion of my friend from Parry Sound–Muskoka. I’ll make sure that’s passed along, because many people did say that they have a keen interest in the regulations.

Mr. Barrett: Just further to Mr. Marchese’s comments, by all means we wish to have all and sundry at the table—industrial, environmental—and not just posting it on the Environmental Bill of Rights registry, which very few people in my riding know about or know how to access. We’re talking about true consultation. We’re talking about citizen participation, where people sit around a table and there’s perhaps some travel, something akin to what we saw a number of years ago with the regulations, let alone the legislation, around nutrient management; not just a posting on the EBR, where those who know about it type something in return. I’m talking about citizen participation in a broader sense.

The Chair: Shall I report the bill to the House? All those in favour of reporting the bill to the House? Those opposed? Carried.

These hearings are adjourned.

The committee adjourned at 1624.

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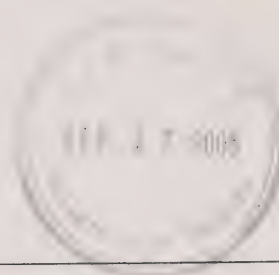
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First Session, 38th Parliament

Assemblée législative de l'Ontario

Première session, 38^e législature

Official Report of Debates (Hansard)

Monday 19 September 2005

Journal des débats (Hansard)

Lundi 19 septembre 2005

Standing committee on the Legislative Assembly

Election Statute Law
Amendment Act, 2005

Comité permanent de l'Assemblée législative

Loi de 2005 modifiant des lois
en ce qui concerne les élections

Chair: Bob Delaney
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Monday 19 September 2005

Lundi 19 septembre 2005

The committee met at 1005 in committee room 228.

SUBCOMMITTEE REPORT

The Chair (Mr. Bob Delaney): Good morning, ladies and gentlemen, members and friends. Welcome to the standing committee on the Legislative Assembly. We meet this morning to consider Bill 214, An Act to amend the Election Act, the Election Finances Act and the Legislative Assembly Act, to repeal the Representation Act, 1996 and to enact the Representation Act, 2005. Our first order of business this morning will be the report of the subcommittee. Would one of the members care to read the report of the subcommittee?

Ms. Jennifer F. Mossop (Stoney Creek): Your subcommittee on committee business considered on Thursday, July 7, and Wednesday, September 14, 2005, the method of proceeding on Bill 214, An Act to amend the Election Act, the Election Finances Act and the Legislative Assembly Act, to repeal the Representation Act, 1996 and to enact the Representation Act, 2005, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings from 10:00 a.m. to conclusion (no later than 5:00 p.m.) in Toronto on Monday, September 19, 2005.

(2) That the clerk of the committee, with the authorization of the Chair, publish notice of the hearings in selected Ontario English- and French-language daily newspapers, as appropriate, at least 10 days prior to the start of public hearings.

(3) That notice of the hearings be provided by news release through Canada NewsWire, and also be posted on the Ontario parliamentary channel and on the Internet.

(4) That the deadline for receipt of requests to appear be Tuesday, September 13, 2005, at noon.

(5) That the minister be invited to appear before the committee on Monday, September 19, 2005, at 10:00 a.m. for 15 minutes to make a presentation and answer questions, followed by a five-minute statement from each party.

(6) That the length of presentations for witnesses be 20 minutes for groups and individuals.

(7) That the clerk of the committee distribute a list of potential witnesses received at the deadline for requests

to each of the three parties by Tuesday, September 13, 2005, at 5:00 p.m.

(8) That if required, each of the three parties supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by Wednesday, September 14, 2005, at 5:00 p.m. These witnesses must be selected from the original list distributed by the committee clerk.

(9) That if all presenters can be scheduled in a given location, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party list would be required for that location.

(10) That the research officer provide background information on the bill prior to the start of public hearings, and also provide a summary of presentations by Tuesday, September 27, 2005.

(11) That the deadline for receipt of written submissions be Thursday, September 22, 2005, at 5:00 p.m.

(12) That proposed amendments to be moved during clause-by-clause consideration of the bill should be filed with the clerk of the committee by Thursday, September 29, 2005, at 5:00 p.m.

(13) That clause-by-clause consideration of the bill be scheduled in Toronto on Wednesday, October 5, 2005.

(14) That each party be allowed five minutes for opening statements at the beginning of clause-by-clause consideration of the bill.

(15) That the clerk of the committee, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair: May I have a motion to adopt the report of the subcommittee? Mr. Racco. OK. Any debate? Good. Thank you.

Our first item of business is a presentation by the Honourable Marie Bountrogianni, the Minister of Inter-governmental Affairs and minister responsible for democratic renewal, who is—

Mr. Ernie Hardeman (Oxford): Mr. Chairman, I don't think you called the vote on that.

The Chair: I'm sorry. You're correct. I didn't call the vote on the subcommittee report. Those in favour? Opposed? Carried, contentious issue though it may be.

ELECTION STATUTE LAW
AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI CONCERNE LES ÉLECTIONS

Consideration of Bill 214, An Act to amend the Election Act, the Election Finances Act and the Legislative Assembly Act, to repeal the Representation Act, 1996 and to enact the Representation Act, 2005 / Projet de loi 214, Loi modifiant la Loi électorale, la Loi sur le financement des élections et la Loi sur l'Assemblée législative, abrogeant la Loi de 1996 sur la représentation électorale et édictant la Loi de 2005 sur la représentation électorale.

MINISTER RESPONSIBLE FOR
DEMOCRATIC RENEWAL

The Chair: Minister, welcome. You have 15 minutes to present to us this morning. Please proceed.

Hon. Marie Bountrogianni (Minister of Intergovernmental Affairs, minister responsible for democratic renewal): Good morning, everybody. Thank you for inviting me to speak before the committee on Bill 214, the Election Statute Law Amendment Act, 2005. This is a bill I strongly stand behind, and one that I believe, if passed, will ultimately strengthen Ontario's democracy.

Today marks the start of a very important process: We begin receiving the public's input on this bill. I know that many of the citizens and groups who will come before you will share with you their thoughts on the three key areas of Bill 214. Like yourselves, I look forward to hearing what is said, and I look forward to coming out of these hearings with a fuller understanding of how to enhance the components of the legislation.

As committee members, you know that this is a comprehensive bill that deals with three distinct areas that are drawn together so that, as a whole, this bill is one that will strengthen our democracy. I'd like to speak for a moment about those three key areas.

The first feature of this bill would create a new electoral map for the next provincial election, maintaining 11 northern ridings and securing strong representation in the Legislature for all Ontarians. Nine years ago, legislation was passed in Ontario to tie our provincial electoral map to the federal one. Since then, the number, names and boundaries of Ontario's provincial ridings have mirrored the number, names and boundaries of its federal ridings.

Over the years, northern Ontarians have seen their representation in government dwindle, both at Queen's Park and on Parliament Hill. As northern Ontarians have sent fewer elected representatives to Toronto and Ottawa, their voice in provincial and federal affairs has been weakened. For example, the number of northern Ontario MPPs elected in the Legislative Assembly fell from 15 in the 1995 provincial election to 11 in the 1999 election.

The number of northern Ontario MPs elected to the House of Commons fell from 11 in the 2000 federal election to 10 in the 2004 election. I'm sure you will hear from people in North Bay that northern Ontarians do not want to see their representation further eroded. This bill responds to those concerns.

The McGuinty government believes that every region of Ontario is significant and has an important role to play in building a strong and prosperous province. We also believe that in order to do so, every region needs to be represented effectively in the Legislature. By maintaining 11 ridings in northern Ontario, this bill will guarantee an effective voice for the north. It will ensure that northern Ontarians continue to contribute to and share in our province's growth and success.

This bill will also add four ridings in southern Ontario. Southern Ontario's population has grown and, simply put, seats must be added to the Legislature to make sure that southern Ontarians are fairly represented at Queen's Park. Of course, representing a geographically vast and sparsely populated region like northern Ontario is very different than representing more compact and densely populated urban regions in southern Ontario. This bill addresses that reality and speaks to those differences by striking a careful balance to ensure that all Ontarians have a say in shaping the future of our province. If this bill is passed, different perspectives from across the province will continue to be heard, considered and debated in the Legislature.

Second, this bill would set fixed election dates. Provincial elections would be held on the first Thursday in October every four years. Ontario's next provincial election would be held on Thursday, October 4, 2007. The right of Premiers to call elections based on partisan and political considerations would become a thing of the past. Election campaigns would also last 28 days. All political parties and candidates would know when future campaign periods start and end. Everyone would be on a level playing field.

Fixed election dates would allow the government and the public service to work within clearly established time frames. As many who work in government know, speculation on the timing of an election call can often result in enormous uncertainty. Work plans can sometimes be stalled and decisions delayed. That kind of uncertainty is not the public interest. Fixed election dates would result in better government.

Fixed election dates would also ensure that voters know when and why an election is called. An election wouldn't be called because it's the most opportune time for the Premier of the day. An election wouldn't be called because it's in the political interests of the governing party. Instead, elections would be held every four years on a fixed date because it's in the public interest.

Of course, giving voters the chance to vote doesn't mean that they will vote. All of us know that voter turnout has declined steadily in the last four elections, from 64% in 1990 to 57% in 2003. We need to reverse this trend. We need to get more Ontarians to the polls on election day.

Changing how elections are called is just the starting point. We want to inspire greater public confidence in our electoral system. We want Ontarians to trust in the integrity and fairness of our democracy. We want Ontarians to get out and vote, and we want them to know that their vote counts. Knowing beforehand when an election will be held will allow Ontarians to participate more easily and more effectively in their democracy, whether as candidates, volunteers or voters.

Third and finally, we want to give people confidence in our political finance system, so that people feel that the democratic system is working as it should. This bill would improve the transparency of our political process by requiring real-time public disclosure on the Internet of political contributions. All contributions over \$100 to a political party or leadership campaign would have to be reported to Elections Ontario within five business days. Elections Ontario would then have to post this information, including the contributor's name and the contribution amount, on its Web site within five business days, the fastest disclosure time in Canada. Once enacted, this reporting provision would ensure that every previously undisclosed contribution received by all political parties and leadership campaigns since January 1, 2004, is disclosed within five business days. The bill's provisions would apply to both election and non-election periods as well as to leadership campaigns. I'm proud to say that this rigorous system of disclosure would make Ontario's political finance regime the most transparent in Canada.

In summary, this bill charts the course for meaningful and fundamental improvements to how Ontarians govern themselves: It secures strong and effective representation for all Ontarians in the Legislature; it sets aside the guessing game of when elections will be held, puts all political parties on a level playing field and puts the public interest ahead of the interests of the governing party of the day; and it provides Ontarians with the most open and transparent political finance reporting regime in Canada, allowing for the real-time public disclosure of political contributions and setting the stage for further political finance reform.

We're modernizing our democratic institutions and making the political process more transparent to reinforce the integrity of our political system and build citizens' trust in government. We're putting in place changes that will leave a lasting legacy of more open government, of government that's more accountable to the people it serves and of government that's deserving of the public trust.

As minister responsible for democratic renewal, I look forward to the committee's examination of this bill. I know that the feedback you receive on Bill 214 will be very valuable as we move ahead with our bold agenda to renew and strengthen Ontario's democracy.

Thank you.

The Chair: Thank you very much for coming in. We should have time for a brief question or two from each side, if desired. Mr. Hardeman.

Mr. Hardeman: Thank you very much, Madam Minister, for the presentation. I guess I don't have any specific questions. I do appreciate the fact that we're having these hearings at this point so we can hear from the public.

I do have a number of concerns in the bill. It seems to be built on the perfect system, except that there doesn't seem to be any ability to monitor it or to enforce it or to make it work properly for everyone. I would just speak to northern Ontario, and I would agree with you that the politics in northern Ontario is totally different than in Hamilton or even in Oxford. We do have ridings in southern Ontario that mirror the northern Ontario ridings that have that larger population but geographically have a much, much larger area.

The problem I have is that when we go to the principle of modern democracy, which is that every vote counts and every vote counts equally, I'm having trouble with the way we're implementing this as to say that that's still true. I think the most basic part of our democracy is that when I go to vote, it counts the same as when you go to vote. I think we're going away from that in this. Is that not a concern that you have?

1020

Hon. Mrs. Bountrogianni: Are you speaking, Mr. Hardeman, about the 11 northern ridings not being enough, being too many? How do you see this as an issue specifically?

Mr. Hardeman: I think it's based on the principle that it's one person, one vote. In the past, we've always been very cognizant of the fact that when we redistribute the ridings, the variance should not be more than 25%. That's what the numbers are presently based on. When we change the system to stay with one person, one vote—the 25% variance for everybody except northern Ontario—and we change that formula, now I notice in the new distribution we will have all the ridings but one in northern Ontario in excess of the 25%. So we're moving further away from the same power of the same vote. Would the solution not be to have more ridings in southern Ontario to match that?

The Chair: I need your answer to be pretty brief.

Hon. Mrs. Bountrogianni: I understand your concern now. I think most of us—I hope all of us—who have travelled to the north excessively since being elected, particularly those elected before the 2003 election, are awed by the vastness of the geography of the north. For example, one of the ridings is the size of Great Britain. The fact that that member has to travel for hours from one point of his or her riding to another does put a stress on representation, proper representation. I'm from Hamilton. I can do one end of my riding to another in 15 minutes. So there isn't any difficulty for anyone, any voter, to approach me, or for me to approach them. That isn't the case in northern Ontario. We heard this in opposition. We heard the concerns about both the federal and the provincial riding boundaries, which is why we had in our platform an extra riding to preserve what we have now in the north. I understand your concerns, but

we do believe by adding ridings to the south, that will be addressed.

The Chair: Ms. Churley.

Ms. Marilyn Churley (Toronto–Danforth): Thank you, Minister. Just to follow up on that, I believe that the point, which I support, is not—as you said, every vote should count. It's not about the ability of an MPP, a representative, to get around his or her riding; that's to do with resources in order to do that. But what we're talking about here is every vote counting. I would say that for MPPs in the north, if they need more resources, just as I do in the city to rent an office in downtown Toronto these days, you deal with that this way. But in terms of every vote counting and the proportion of representation in the Legislature before we move to a better proportional representation system, we are in fact, by this bill, giving northern seats more representation, disproportionately, in this Legislature, and that's the concern. I have to speak up for Toronto. It was this party—it's kind of rich that they asked that question. Mike Harris came to the front of the Legislature in 1995 with chairs on a flatbed truck, getting rid of a bunch of them to reduce the members in the House. Now that we're putting some of them back, there is an issue of the disproportion of northern seats now to southern seats in the Toronto area.

Hon. Mrs. Bountrogianni: Could I reply to that? As you probably know, this bill, with respect to the boundaries and the number of members, is for the next election. We will have, as you know—and I appreciated your comments last week with Mr. Broadbent—a constituent assembly who will look at possible political reform and possible boundary changes, in which case, if that comes out in that democratic and open and transparent process, we will relook at that.

Ms. Churley: Can I ask another really quick question on campaign finance reform? My question would be, and it's quite a serious one: The NDP and I, as you know, have been pushing for, with my real-time machine and other props, real-time disclosure for some time. In the meantime, your Premier and members have had very high-priced dinners and receptions without real-time disclosure and the money is rolling in. There's a real concern that by the time—and we support this, of course—but there's been a real lag from the promise in the last election to when this will be passed. In the meantime, the money's rolling in for the Liberal government that's in power. By the time this comes in, your coffers will be full. It will click in and then perhaps make it somewhat harder for opposition parties to raise money. Do you think that's fair?

Hon. Mrs. Bountrogianni: First, if this becomes law, it will be retroactive to January 2004—given that those numbers have already been reported, technically it will be January 2005—so no one will be able to hide anything. It's my understanding that all political parties have high-priced fundraisers.

Ms. Churley: Not like yours.

Hon. Mrs. Bountrogianni: That's one reason why this bill is a necessity. This will be retroactive to January

1, 2004, so that everything over \$100 will be on the Web site.

The Chair: Ms. Mossop.

Ms. Mossop: I just have a few comments to make. In my experience so far in politics, and prior to that as a journalist for many, many years, there is definitely a strong appetite among the electorate for democratic reform. Democracy, as we know it, is the best we've got on this planet and an effort to make it better is most welcome.

I think this bill and other initiatives by this government, like the citizens' assembly, like the wider powers for the Provincial Auditor to look into every corner of government and examine those books and to open those books to the public prior to the next election—and we now know when that next election is, so the Provincial Auditor knows when the work has to be done—are going to go a very long way to meeting the concerns of the electorate around what has not been perceived as fully accountable or transparent. People want to know what kind of shape the finances of the government are in before they have to go to the polls, and I think this is just an enormous piece of that. This bill and the other initiatives—tremendous start, tremendous that we're doing the work to reform democracy in this province, in this corner of the world.

I commend you for your work. I know, from my experience working with you and with our government, that you will be open to what we hear during the public hearings, and we will be open to making improvements as necessary and looking very much forward to hearing what the citizens' assembly has to say to make changes going forward.

Ms. Churley: Mr. Chair, just on a point of order, I guess: I'd just like to say that I believe retroactive real-time disclosure is an oxymoron. I just needed to get that on the record.

The Chair: Right up there with jumbo shrimp.

Hon. Mrs. Bountrogianni: I feel compelled to respond to that. The reason I brought that up—I agree with you. Retroactive real-time disclosure is paradoxical. My response was to your point that political parties are raising a lot of money and by the time this bill is passed, it will be too late. People will know how much we're raising and how much you're raising and that is why there's retroactivity.

The Chair: I think the comment was more on the semantics than the substance.

Ms. Churley: Oh, no, on the substance too.

The Chair: I stand corrected. Thank you, Minister.

Hon. Mrs. Bountrogianni: Thank you very much.

The Chair: Opening statements?

Mr. Hardeman: Thank you very much. Again, as it relates to the question and as it relates to the statement the minister made, it's very clear that there are three parts to this bill, the first being fixed election dates. We support the premise of having fixed election dates. I think that will serve everyone well, but again, it doesn't really point out some of the problems with it.

The minister pointed out that there will be a 28-day writ period, but the election will be six months long because no one will be waiting for the writ period. In fact, everything that one spends before the writ period is not considered election expenses. So all of a sudden we're going to have people spending on the campaign for six months and the only thing the writ period will tell us is that now we have to keep track of how much we're spending because we have to stay within the limit. I think that part of it creates a problem because everybody knows when it comes; you know when you can start the pre-election spending in order not to have to comply with the level you can spend during the 28 days.

1030

On the issue of the riding redistribution, I have some real concerns with the fact that this is being done and not following the standard of an arm's-length review of where the boundaries should be. This is the first time in some time—and I think if we go back in history and to some of the research that legislative counsel did, we find that the Liberal Party has been very adamant in the past that this should not be a political exercise, that this should be done by an arm's-length commission to reset the boundaries.

We are now saying, "In southern Ontario, we will go with someone else's commission, and in northern Ontario, we will do it somewhat differently, because we made an election promise and so we're going to keep that by leaving that riding."

I think that if we're going to look at changing the boundaries in the north differently from what the arm's-length commission said, we should be looking at the whole thing through a commission to make sure that it's fair and not, as I think it was referred to, gerrymandering, which suggests that we can get political advantage by making a decision on the boundaries, rather than doing it in the best interest of all the people we're representing.

The one other thing I just quickly want to touch on is the real-time disclosure. I know Ms. Churley has made the point a number of times that it's necessary so that as things are happening, people know where the money is coming from that the party and the candidates are spending in the process of making their decisions. I support the issue of real-time disclosure, but the issue of five days—and I hope we will hear more about that from some of our presenters—is going to be almost impossible, if not totally impossible to adhere to in a lot of areas of the province where the raising of the funds, the receiving of the funds, the recording of the funds and the banking of the funds is all done by volunteers who may only get together once every two months to deal with the business of the association. I think there are many of our donations over \$100 that don't get into the bank in the five days that are being recommended here, so they surely will not be recorded and on the Internet as received.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Tell him it doesn't apply to associations; just parties.

Mr. Hardeman: Again, I think it's very important that we get that out of the discussion, but I think that it's important to recognize that political contributions for parties and associations cross that border at will. They can put it in the association and transfer it to the party, and the party can put it in the party and transfer it to the association without great difficulty. So if it applies to one, it applies to all, as to how it gets there.

It's even greater with some of the donations that go to the party. By the time the resident in Oxford makes the donation and it gets to the party headquarters and all the paperwork gets done, I'm not sure it's going to get done within the five working days. I am sure that the government has put nothing in place to monitor that to make sure that it's happening. I think that really needs looking into.

With that, I will end there. I think that my colleague Norm has a few comments he would like to make.

Mr. Norm Miller (Parry Sound–Muskoka): I'll wait.

Mr. Hardeman: He says he'll wait until the process goes on.

We look forward to the presentations that come before us so that we can maybe address some of the concerns we have. Generally, we support the principle of what's in the bill.

Ms. Churley: I understand this doesn't apply to riding associations. Is that correct? No. That is a problem, although there would have to be a system worked out. I don't think there's a huge concern about smaller donations, but when the donations get bigger, up to the maximum, through riding associations, there is a way to slip in undisclosed donations on real-time disclosed donations through the backdoor. I think that's a flaw.

Overall, I'm supportive of the steps being taken in this bill, but my problem is that when I first stood in the House and supported fixed election dates, for instance, it was cherry-picked out of a whole set of changes that we need to make to our democratic process. Since that time, of course, the government has introduced two different bills and different processes in terms of looking at the whole democratic renewal. I believe that we should be doing all of these things in one piece, because when you cherry-pick out a piece like fixed election dates, for instance, away from the whole process of perhaps changing the system to some kind of proportional representation and the other things that are embedded in the other bill that's being looked at, then I think you have a problem. We're not dealing with it all in one piece. I think that is critical. If you're changing to a fixed election date and over here you're also looking at changing the system without it being brought together, it's problematic.

I mentioned earlier my concerns about real-time disclosure. It's something I very much support, but I would like to see it extended in a reasonable way to riding associations.

I just overall have a—how much time do I have now, Mr. Chair? A couple of minutes?

The Chair: You're OK. You should have another minute or two.

Ms. Churley: As the democratic renewal critic for my party, I've written a letter to the minister, and I'm going to just highlight some of the aspects of that letter—I don't have time to read it all—which gives my position and our party's position on the overall electoral reform:

"In recent years, average Ontarians have lost faith in their politicians and their institutions of government. They have good reason to be cynical: political parties regularly sell access to their leaders while the concerns of Ontarians—the public interest—are ignored; less than half of Ontarians may vote for a political party yet that party can form a majority government; solemn election commitments are discarded once a party is in office; the makeup of elected Legislatures, in terms of votes for parties, is not representative; in terms of ethnicity or gender the Legislature does not accurately represent the population. This has to change."

We have come up with a whole series of recommendations, which would include:

A full and complete enumeration has to be brought back, and it has to occur immediately to ensure that the permanent voters list is up to date as you move forward with these citizens' bodies;

All major decisions concerning the mandate, funding, staffing, methodology and timing of citizens' assemblies and citizens' juries must be approved unanimously by an all-party committee of the Legislative Assembly;

Any citizens' assembly or citizens' jury must be accountable to the Ontario Legislature, not to a minister, cabinet or the Premier;

Proactive steps must be taken to ensure that any citizens' assembly or citizens' jury reflect the population of the province.

These, today, are not embodied in this bill, but they are all part and parcel of the same democratic renewal process which the government is embarking upon. I raise them because I believe that these pieces that we're dealing with today are part and parcel of the whole democratic renewal process. I think it's important that we take that into account as we listen to people who come forward to discuss this bill before us today. I expect that some people will indeed be talking about the bigger picture, and I don't see a way to really talk about this without including it in the larger context.

The Chair: Thank you. Ms. Mossop?

Ms. Mossop: No, thank you.

The Chair: OK. Thank you very much.

ANIMAL ALLIANCE ENVIRONMENT VOTERS PARTY OF ONTARIO

The Chair: Our first deputation this morning comes from the Animal Alliance Environment Voters Party of Ontario: Liz White and Stephen Best. Please sit down and make yourselves comfortable. You'll have 20 minutes to present to us this morning. You can use the entire 20 minutes if you so choose. If you leave any time, the

remaining time will be divided among the three parties to ask questions of you. Please proceed when you're ready.

Mr. Stephen Best: I want to thank the Chair and the members for allowing us to participate. As you've probably guessed, I'm Stephen Best, and this is Liz White.

I think we've distributed the paper. Let me read from it rather than speak off the top of my head, because then I won't miss things which I'd like to get in.

1040

The proposed amendments to the Election Finances Act that would, if passed, require that reports be filed with the Chief Election Officer five days after the deposit of a political contribution are the portions of Bill 214 the concern us the most.

Liz White is one of the founding directors of Environment Voters, she's a director of Animal Alliance of Canada and she is the leader of a new Ontario political party that is trying to become registered. The party name, which has been accepted by the Chief Election Officer, is the Animal Alliance Environment Voters Party of Ontario. I am also a founding director of Environment Voters and am serving as the president of the Animal Alliance Environment Voters Party of Ontario.

As a consequence of recent decisions by the Supreme Court of Canada, Liz White has commenced an action in the Ontario Superior Court to have portions of the Ontario Election Finances Act declared unconstitutional. If the challenge is successful, which seems likely, Bill 214 will have a direct impact on how we conduct our affairs in the future.

Animal Alliance is a federally incorporated non-profit organization. Environment Voters is the political arm of Animal Alliance. The goal of both organizations is increased protection for animals, wildlife and the environment. Animal Alliance and Environment Voters are unique in the environmental and animal protection movement in Ontario and Canada, in that much of our work involves campaigning in elections. For the most part, elected representatives decide the degree of protection, if any, that will be afforded animals, wildlife and the environment. Consequently, Animal Alliance and Environment Voters campaign in elections as a third party. We support candidates and parties with good environmental and animal protection records or policies, and oppose those with poor ones. Our first campaigns were in the 1999 Ontario provincial election. We campaigned in six electoral districts. In fact, one of the rookie MPPs we helped elect in that election is now the minister whose name appeared at least in the original version of Bill 214, the Honourable Michael Bryant. Since 1999, we've campaigned in over 50 constituencies across Canada at the municipal, provincial and federal levels.

We are now preparing to participate in the next federal election—not as a third party, however, but as the Animal Alliance Environment Voters Party of Canada, a federally registered political party.

Before I get to our specific concerns about Bill 214, I would like to invite Ms. White to give you a brief overview of her legal action in the Ontario Superior Court,

because it will not only explain why we are here and concerned about Bill 214, but also perhaps inform the future deliberations of this committee.

Ms. Liz White: I'm going to be very brief, and I will also read so I don't miss any points. My apologies for doing that.

The quality of our environment, the species of wildlife that will be exploited and how, and the treatment of domestic animals are decided by politicians who every few years have to go home and convince people to vote for them. Consequently, perceptions of how voters will respond to any particular legislative initiative are always a prime, and often the major, determinant of public policy. If doing the right thing, rather than the political thing, primarily decided public policy, there would be no environmental degradation caused by automobiles, no animal cruelty in the livestock industry and no need to consider new nuclear power plants. I'm not criticizing politicians when I say this; I am merely stating the obvious. Politicians in democracies operate in an environment that has been described as a "vote economy." Policies that earn votes are good; those that lose votes are bad.

What this means for Animal Alliance and Environment Voters is that if we are to help protect the environment, wildlife and animals, we must make doing so good politics. Because of our present winner-take-all voting system, we can do that most effectively, in our view, by campaigning as a third party and supporting or opposing individual candidates.

Unfortunately, in May 2004, the Supreme Court of Canada ended our effectiveness as a third party. In *Harper v. Canada*, a case in which we intervened, the court upheld the provisions of the Canada Elections Act that set spending limits for third parties so low as to deny them the capacity to meaningfully participate in elections. It's difficult to communicate with many voters in an electoral district when all you can spend is a little over \$3,000.

However, at the same time the court was taking away our rights to campaign effectively in elections as a third party, it was making it easier for us to register as a political party and to do more than we could ever do as a third party. In *Figueroa v. Canada*, a constitutional challenge that began in Ontario, the court ruled that the federal government's requirements for registering a political party were unconstitutional. Today, because of *Figueroa*, federally registering a political party requires the support of only 250 electors and a declaration by the leader of the party that "one of the party's fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election." We have registered the Animal Alliance Environment Voters Party of Canada and will be enjoying all the benefits and be subject to all the obligations of a registered political party once the writs are dropped for the next federal election, or if there's a by-election, prior to the federal election.

The Supreme Court of Canada has in effect decided some aspects of electoral law in Canada, and their deci-

sions will constrain provincial governments. In particular, provincial governments can now restrict spending of third parties, but they must also reduce the barriers to registering political parties. Ontario has the highest barriers in Canada to forming a political party: the support of 10,000 electors or the nomination of candidates in 50% of the electoral districts. Moreover, while the party is working to become registered, it is not permitted to raise any funds.

If we are to ensure that Animal Alliance Environment Voters can campaign in Ontario elections and not be limited by any third party restrictions, which the Ontario government might promulgate in the democratic renewal process, our only course is to become a registered political party in Ontario.

Today, my attorney is filing the necessary documents asking the Ontario Superior Court to rule that sections of the Ontario Election Finances Act that pertain to the registration of political parties be declared contrary to the Canadian Charter of Rights and Freedoms. Our argument is, of course, based on the Supreme Court of Canada decision in *Figueroa*, which means—not to prejudge the Superior Court's decision—that it is likely we will prevail and that the Ontario Chief Election Officer will be required to register not only the Animal Alliance Environment Voters Party of Ontario, but also the over 130 other parties in Ontario that have been denied registration.

As a registered party, we and our supporters will enjoy the benefits and be subject to the obligations and restrictions on registered political parties that this committee is now considering. With those obligations and restrictions in mind, I would like again to turn the microphone over to Mr. Best to talk about Bill 214.

Mr. Best: Our concerns with Bill 214 are more mundane than making protection of the environment good politics, planning election campaigns or challenging the constitutionality of Ontario's election legislation. Our concerns have to do with the reporting of political contributions.

The changes to the Election Finances Act proposed in Bill 214 would require registered political parties to, "Within five days after a contribution is deposited ... file with the Chief Election Officer a report about the contribution."

I believe that there is general agreement that the financing of political parties should be transparent, that the public has a right to know who is paying for the campaigns of their elected representatives. There is no question that elected representatives and political parties are sensitive to and appreciative of individuals, corporations and organizations that contribute to their campaign contributions. There is also a valid concern—and ample evidence, most recently from Toronto and Ottawa to justify the concern—that this financial support can result in undue influence possibly on legislation and certainly in the awarding of government contracts.

Transparency in political contributions is perhaps one way to diminish, if not eliminate, this problem. However,

excessive transparency that will have no effect on the problem of undue influence merely increases the reporting burden on political parties.

Last year, F.J. Barrera gave \$170 to the Ontario Liberal Party; Mr., Mrs. or Ms. P.F. Baston gave \$160; and R.N. Black gave \$120. This information, despite it being public and posted on the Elections Ontario Web site, does nothing to improve or clean up politics and democracy in Ontario. The amounts are too small to raise concerns; the identifying information is too limited to be usable. Filing reports of contributions like these within five days of deposit will not change those facts.

If the Ontario Superior Court finds Ontario's political party registration regulations unconstitutional and the Animal Alliance Environment Voters Party of Ontario is registered, we can expect that most of our supporters—as many as 90%—will make small contributions, giving less than \$500 a year. But most, because of the tax benefits, will contribute over \$100. Given that it is barely a possibility that we'll ever elect an MPP, and an impossibility that we'll ever form a government, it is difficult to imagine how having the Animal Alliance Environment Voters Party of Ontario and the 130 or 200 other smaller parties that might be formed send weekly reports to the Chief Election Officer improves democracy in Ontario.

1050

As a political strategist, I understand the propaganda value of the five-day filing period for political contributions over \$100, but perhaps that marginal value might be set aside in the interests of regulations that truly enhance transparency and are not an undue and unnecessary burden on political parties, particularly smaller parties.

In anticipation of the Chief Election Officer having to register perhaps dozens or even hundreds of smaller parties, our request of this committee is that the five-day filing requirement be reconsidered and a more reasonable and practical filing regime be considered. Perhaps contributions of less than \$2,500 or \$5,000 a year can be reported annually with higher amounts reported more frequently. At the very least, the regulations should be commensurate with the issues and the concerns that they're intended to address and should not place undue and unnecessary burdens on political parties, particularly smaller parties that are unlikely to elect anyone or form the government and therefore will never be in a position to return any favours other than saying thank you for a political contribution.

The Chair: I'll need you to sum up fairly quickly.

Mr. Best: One last summation is that in the last federal election, I did a third-party campaign for a group called the Lubicon Legal Defence Fund. We were asked by the chief federally as a third party to register all the contributors to that campaign: names, addresses, telephone numbers and the amount given. We sent a letter to the federal Chief Electoral Officer and said we were not going to do that until we had information from the privacy commissioner about the process of revealing those names and amounts. We withheld that and, to this

day, have not received anything from either the Chief Electoral Officer at the federal level or the privacy commissioner about our request.

With that, we thank you for hearing our concerns and would be pleased to answer any questions, if there are any.

The Chair: Thank you very much. That concludes the time you have available this morning. Unfortunately there won't be time for questions.

ROBERT WILLIAMS

The Chair: Our next deputation is Mr. Robert J. Williams, if he's in the room. The clerk informs me that members will find notes for this and the next deputation at their desks. Mr. Williams, welcome this morning.

Dr. Robert Williams: Good morning. Thank you, Mr. Chairman.

The Chair: You have 20 minutes to make your point. Should you use less than the 20 minutes, the remaining time will be divided among the parties to ask you probing questions. Please begin at your leisure; the floor is yours.

Dr. Williams: I'll do my best to stay within that time limit. My remarks really only address two parts of the bill. I'm generally supportive of the amendments dealing with the disclosure of contributions, at least in terms of what they do. There are a number of other issues that this bill doesn't deal with, but frankly I concentrated on the other two parts, and I would like to address my comments to them.

The first is the question of fixed election dates. Perhaps as part of an occupational hazard as an academic, I decided I would have a look at this question because there seems to be such general consensus that it's a good idea. In playing that role, I decided in the end, perhaps reluctantly, that I'm not sure that it's a very significant innovation after all, and I have three or four comments that I'd like to make about the particular provisions in Bill 214 that leave me saying, "Well, maybe this is not really as big a breakthrough as all that."

First of all, it was of course the 2003 election in October that served as the kickoff date for this particular arrangement. It seems like we've simply said, "Oh, the last election was in October, so we'll make the next election and all the other ones that follow happen in October." I'm just asking whether it's clear that, in consultation with Elections Ontario or anyone else, this is in fact an appropriate time of year to conduct an election in Ontario? Do we have the human resources to run that election? Are the locations that we might use for polling places available on a regular basis? In other words, is that October date necessarily the best one we should be looking at? I guess I'm saying I don't really see a compelling rationale for an election at that time of year in the support for this document, at least from what I've seen. The fact that it's consistent is one thing. I'm not sure that that necessarily makes it the most appropriate outcome.

Secondly, imposing a fixed election date seems to me to force the work of Parliament to conform to what we

might call an artificial cycle. We've basically said the work of Parliament is going to last four years. Whether it's worth four and a half years or three and a half years, it's got to be four years.

I suggest to some of you who have had chats along the way with individuals in the Clerk's office to go back to the example of what happened to petitions on the daily order paper. As I understand it, petitions have now become a 20-minute block of time, whether it's needed or not. I'm not sure that simply saying four years is the only way to do it is necessarily the right way to do it.

I'm also very concerned that it leaves undefined the conditions that might justify dissolution. There are provisions in there for an early dissolution, but I think it's impossible to try to spell out what those conditions are. To simply say the Lieutenant Governor could dissolve the House if conditions are right—what are those conditions? What have we really changed from all this? It's perhaps like imposing a time clock in a baseball game. It doesn't really fit to say it's got to be four years and that's that.

Finally, and very broadly speaking—I think all parties have spoken to this—it's defended on the grounds that it will make it difficult for a Premier to set election dates when it's politically opportune; if you will, when all the ducks are lined up to maximize the prospects for re-election. However, again wearing my academic hat, it's possible that we could argue the other direction: Premiers—not just this Premier but every Premier—will use every power and resource available to make sure all the ducks are lined up every October 4. The only thing that seems to have changed is when the call comes.

I suppose, taking another sports analogy, it's a bit like the difference between the end of a hockey game and the end of a soccer game. The end of a hockey game is a definite time, but in a soccer game, there's a bit of fudge time in there. That's what we've got now. We don't quite know when the call is coming, but we know it's coming. Now it simply says the time is fixed.

So does the provision for fixed election dates enhance democracy? In my opinion, not much. It's not a conclusion I started with, but I decided that perhaps it's not quite as straightforward as it looks.

The question of adjustments to electoral boundaries, I think, takes us to some of the principles of representation that can be applied to the Ontario Legislative Assembly. Again, I'm somewhat critical of these, and if anything, I guess the point I would make is that the bill doesn't really go far enough. There probably should be a much broader question that needs to be addressed in here, and I've set out some comments on that.

First, I argue that Bill 214 creates a system of representation that has no real coherence or consistency. This again touches on points I've already heard this morning. The Representation Act, 1996, aligned the boundaries for federal and provincial elections, partly on the grounds that this would be easier for voters. We wouldn't need an election commission; it would be done in Ottawa. We'd simply use their boundaries, and away

we go. We'd save money because we'd have fewer MPPs.

I'm not convinced that those advantages are as straightforward. In fact, I think they're highly debatable. Having gone through the discussions on MPP salaries and workloads, some of you would realize that those savings are not all that significant. More importantly, I think the two sets of boundaries are already out of sync. The Ontario House has had two elections on these boundaries; the federal House is already on to a new set of boundaries and could have yet another election on those new boundaries before this House is dissolved again. In effect, the rationale for having the two in sync really has disappeared. You might as well have your own system as try to pretend you're using the federal system—leaving aside, of course, the proposals that are here.

Bill 214 also breaks what I call the nexus of federal and provincial ridings by entrenching northern Ontario— is Parry Sound–Muskoka really northern Ontario? Anyway, it leaves the rest of Ontario to fit into the federal representation system, and the net result, it seems to me, is an election map that's driven by two different dynamics: one in the north, set on the basis of the 1991 census, which said seats were going to be of a certain size and pattern; and the other part fixed, at least if we still use the federal system, on the 2001 census, which has its own dynamic. So we've really got a thing that doesn't fit together and again, even that, leaving aside the question of Algonquin Highlands and whether it's one or the other, or whatever. In other words, the system is not really very coherent, in my view, and probably should be thought about in a different way. That's really the second part here.

1100

I believe that Bill 214 perpetuates a system of representation that is largely shaped by the needs of the House of Commons, not the Ontario Legislative Assembly. In other words, the bill does not recreate or restore a representation system that addresses Ontario's own priorities. I've got about three points there. One, the representation in what I might call the rest of Ontario—that is, non-north, however defined—is determined by calculations and principles embedded in the federal Electoral Boundaries Readjustment Act and the process for boundary revisions that is implicit in it. Therefore, the number of seats in the Ontario Legislative Assembly is dependent upon a calculation related to the population of the other provinces and not a determination of the constituencies needed to provide Ontarians with effective representation within their own unicameral political system. In other words, what we end up with is largely a result of a federal process. That's one of the reasons the original expectation in 1995 was that the Ontario Legislature would have 99 seats. It ended up with 103 because that's what happened in Ottawa. We inherited that outcome.

Secondly, the notion of effective representation within Ontario's political system puts demands on MPPs that I think are quite different from those put on MPs—this is

not an original observation; it's made by many people. Dealings with municipalities, school boards and hospitals and other kinds of things that you as MPPs must do are not really the kinds of roles that are played by MPs. Yet it appears that it's the role of the MP that shapes the nature of constituencies in Ontario. I suggest that Bill 214 essentially perpetuates this rather poor fit between what an MP needs and what an MPP might be able to better serve.

The last point here is a very large one, and I suppose only old guys like me who look at Ontario history in a big perspective—I've been teaching courses in Ontario politics for over 30 years. I was immediately struck by, and am still somewhat uncomfortable with, the principle of the Representation Act, 1996, which essentially handed over to the Parliament of Canada the right to shape the representative components of the Ontario Legislative Assembly, which this bill perpetuates. Symbolically and practically, this arrangement appears to have disregarded a very long and acrimonious struggle—granted, it was in the 19th century—to try to establish Ontario's and the Ontario Legislative Assembly's independent status in relation to the Dominion Parliament. The Representation Act, 1996, in effect said, "Ottawa, you decide a key part of our representation system. We're happy to let you do it." I suggest that that is something we really ought perhaps to revisit, and think again about whether Ontario should decide for itself what its system ought to look like.

I'm not positive that I've got this information right, but on a symbolic level that point is reinforced in that I believe that when the redistribution process is going forward, members of Parliament are entitled to speak to the boundary changes, both in Parliament and to the commissioners, but MPPs are not. Even though you have to live with the boundaries, symbolically you are just a member of the public. Again, I think that's part of my concern. What we really should have is a system in which this is controlled in Ontario for Ontario's needs.

If you will, the final perspective from me is that Bill 214 doesn't go far enough. It should, in my view, re-establish the Ontario Legislative Assembly's right to determine the principles and practices under which its own members are elected. If that means the re-establishment of a redistribution commission, so be it. I think there are very important reasons why we need to go that far.

So my comments are more about what's not here than about what is here, but I'm happy to share those with the committee.

The Chair: Thank you very much for a deputation that I'm sure everyone thought was thoughtful, informative, incisive and very interesting. We have time for perhaps only one question per party, beginning with Ms. Churley.

Ms. Churley: Thank you very much. That was an interesting take on the process.

Dr. Williams: I'm not sure you'll all agree with it.

Ms. Churley: I agree with much of it, actually. My question for you—in such a short time frame, I have to

limit it to one—do you know of any other system based on the British parliamentary system, as this one is, that has a fixed date?

Dr. Williams: Other than British Columbia?

Ms. Churley: Other than BC.

Dr. Williams: No, I'm not aware of it, and that's part of my concern. I'm not sure that it really fits in too well. Certainly there are conventions. One of the ways perhaps to get around this—and I thought about it after I wrote this—is that maybe what we ought to be talking about is simply adjusting the maximum dates that the House can sit. If five years is too far out, maybe we'd bring it in a little closer or something of that sort. But no, I'm not aware of a situation in which there is a formal requirement of that.

Ms. Churley: Do you believe, then, that if we are going to be seriously contemplating it, it should be part of a bigger package; that is, looking at changing the system to some kind of proportional representation?

Dr. Williams: Just as a forewarning, part of what I'm here to do is thinking about the select committee. I am going to be appearing before the select committee in October and looking at the bigger issues.

I agree. I think this is only part of the way the Parliament and the election system ought to work. Perhaps it would make more sense to plug it in to some of those outcomes.

My second comments could also be thrown out the window if we get to an entirely new system. We'd end up having to do our own work.

Ms. Churley: I agree.

The Chair: The clerk informs me that Yukon also has a version of fixed election date.

Dr. Williams: Right, and Yukon does have a party system, but it's a very small one.

Mr. Brad Duguid (Scarborough Centre): I thought it was interesting, because I haven't thought about it this way before, but in fact you're quite right: Ontario's electoral boundaries are being set on national priorities, populations of other provinces and things like that. Thinking in that sense, I thought that's interesting. At the same time, I can't think of a reason why that's detrimental. I can't think of an example where that has served us wrong in terms of the current boundaries. My question to you is, did you look into the results to see whether in fact there is some kind of example where that hasn't worked for Ontario?

Dr. Williams: My sense is that that's probably overall an aggregate question, if you will. How many seats do we actually have? I haven't gone through to look at where the particular boundaries are. We know lots of things go on in the names, but it's more a question of how many seats we really need to do the work that's necessary. Although I didn't put the comment in here, Ontario, technically speaking, is probably under-represented in the House of Commons, which means this body is forced to work with a smaller number of seats than it might otherwise need, especially for representative connections to the communities, the school boards etc.

We're given a number based on calculations made elsewhere. Virtually every other province but Alberta and British Columbia get bonus seats. We don't get that. We get the bare minimum on a formula devised on a national average. I'm simply saying that we don't have a right, very easily—although this bill goes part of the way—to say, "Maybe our needs are different than the needs of the House of Commons." That's the kind of general message I was trying to bring here.

I'm not saying that the boundaries are necessarily affected by that, although in my own area, I suggest that your colleague Mr. Arnott's constituency certainly doesn't make a heck of a lot of sense as a provincial constituency, wrapping around over a county and a region. I don't know how many school boards or municipalities he's got to deal with. There is no real sense to it.

The Chair: Mr. Miller.

Mr. Miller: Thank you for your presentation. It's has been very interesting. I've got half a dozen questions I could ask you, but I think I only get to ask one. First of all, my riding is Parry Sound-Muskoka.

Dr. Williams: I knew that.

Mr. Miller: I guess I'm the beneficiary of this bill going through in terms of maintaining my own riding boundaries. From my own personal perspective, I'm pleased to have my riding stay intact, more or less. I think most MPPs would feel the same way, that it's nice to be campaigning in the next election where you've been doing your work.

1110

The problem I have with the process is that for the north, the government's really making the decision to have 11 ridings and to maintain ridings with fewer people, you could say. That's happened in the past, and the research department has given us lots of examples where electoral boundaries commissions have recommended ridings in the north that did not fall within the 25% tolerance of population. My only problem with the whole process is that it is the government deciding, not an electoral boundaries commission. Do you have any comment on that?

Dr. Williams: I would very much agree that this is a process that we have, in the last 30 years or so, entrusted to individuals outside elected office. I'm glad the boundaries that are going to be maintained were originally set by such a body, but the decision to actually now use them—you're right—has been taken on in a different way. Again, my bigger perspective would be that if we were to sit down and decide what we think Ontario needs, we might come up with a different pattern.

The Chair: Thank you very much for having come in today, Dr. Williams. Sometimes we're sorry that it's only 20 minutes.

Dr. Williams: I appreciate the time. Thank you.

ALAN HALL

The Chair: Is Alan Hall in the room? Welcome this morning. If you've been here more than a few minutes, you know the ground rules. You have 20 minutes for

your deputation. If you choose to use less than the 20, the remaining time will be divided among the parties for questions. The floor is yours. Please proceed.

Mr. Alan Hall: Thank you very much. First, I wanted to comment to the clerk that I've brought in some appendices to my report with some supporting numbers, which I've left on the table over there. Unfortunately, I spent quite a bit of time in Mr. Delaney's riding this morning, on the 401, so I came in a little bit after 10.

I'm here today as a private citizen, although this is an area that I know quite well. I worked for six years at Elections Ontario as a research assistant, and I've also worked for provincial boundaries commissions in Alberta and Nova Scotia. So this is an area I know fairly well.

I've looked through Bill 214, and I've decided to make seven different recommendations that I think will improve the bill and hopefully improve the democratic process in Ontario. The three areas are redistribution, particularly in northern Ontario, changes to the election law itself and then some fairly small technical issues regarding the wording of the bill.

Starting in northern Ontario, the government decided in its throne speech a couple years ago that it would retain 11 seats in the north, and obviously Bill 214 is the attempt to bring that into law.

Since the 1960s, independent electoral boundaries commissions have been used across Canada to create riding boundaries, because there's the very obvious concern of a conflict of interest in having the elected representatives choose the areas that they get to run in. I think preserving northern Ontario's representation is a laudable goal, but there have been so many changes in the north recently in terms of municipal changes, which have occurred across the province that there should be an independent electoral boundaries commission that is given the task of deciding where those 11 ridings should be.

What I've done for the second part is decided that if the Legislature decides not to create a boundaries commission and just to go right ahead with retaining the current 11 ridings, there are some areas in the north that should be looked at. I've mentioned them as being the city of greater Sudbury and the municipalities of Killarney, French River and West Nipissing, all of which were either created or expanded in the last 10 years with all the municipal boundary changes, but their current boundaries actually straddle provincial riding boundaries. I think these are some areas that should be looked at. Some of the populations are very small, so I don't think it's a major impact on any riding.

Also, there are a few what I would call anomalies in the north, where a community is linked by a road network to a major community but for some reason—probably historical reasons—has been put into a different riding. I think that is something that obviously a commission should look at. If the committee or the Legislature decides that it wants to bring in the boundaries directly, my recommendation would be to speak to the members from those areas and some of the local officials to see which riding would be most suitable for them.

Moving on to changes to the election law, the bill contains fixed dates for general elections. Without getting into the pros or cons of that, the one thing I would like to strongly suggest is fixed dates for by-elections. In the past, Premiers of different political stripes have sometimes held off holding a by-election for purely political reasons, because they didn't think they could win and they wanted to put it off as long as possible. It's kind of like going to the dentist: You put it off as long as you can get away with it. Actually, the first appendix I've added lists every vacancy that has occurred in the Legislature in the last 30 years and how long the seat was left empty. In my original proposal, I mentioned that there were seven cases where people went without representation for six months. That's only in cases where there was a by-election called eventually. There are many other cases where, because by-elections were never called and it just rolled into the next general election, people were left without a member for up to eight months. In the most recent example, John Snobelen resigned in March 2003, but there was no election called and the new member wasn't able to deal with some of the matters of the constituency until October. Some of the ones in the waning days of the Rae government were just ridiculous.

Because of some of these delays, back in 1993 a little-known MPP, Greg Sorbara, decided to introduce a bill, Bill 57, which would actually set by-election dates but still give the Lieutenant Governor in Council some flexibility if that date happened to fall on Christmas or March break or Yom Kippur etc. He suggested using 70 days and 100 days, I believe, as the two windows for by-elections. I've decided to change that to 60 and 90, because there's a shorter campaign period now than there was in place at that time.

Under what I'm proposing, for example, with the current vacancy in Scarborough-Rouge River, once the resignation took effect, there would be a writ of election that would be set for October 20. If October 20 happened to fall on Yom Kippur, then the government would still have the ability to move the date back or forward a couple of weeks but still within a 90-day time period. I think that would, as much as possible, take the politics out of when people can actually elect their representatives.

The second change to the Election Act that I wanted to propose is actually one that's currently before the committee: Bill 76, which was introduced by Richard Patten last year. It's one to provide party names on the ballot, and it's one that seems to occur every few years. It has occurred at least four times in recent history. I think one of the matters that gives it a bit more impetus this time is that a couple of years ago in the Figueroa decision, which was mentioned by a previous intervener, one of the key rights and responsibilities that a party enjoyed was to put their party name on the ballot.

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The Figueroa decision was more concerned about the rights of registered versus unregistered parties, but I think

the principle is the same, that voters deserve to know the political party of the candidates that are on their ballot, rather than as currently happens provincially. I believe there's a sheet of paper that the DRO keeps, and if you don't know the party of one of the candidates, you can go over and ask them. I think that's ridiculous. I think that should be removed, and it's a fairly simple matter.

The next three points are very minor. They deal with technical matters of the bill itself. The first one is regarding the effective date. I believe the effective date of September 1 was chosen because that's when riding name changes came into effect federally last year. However, since that date, the MPs realized they made an error in one of the cases, and they actually reverted to the original name. Changing the effective date of Bill 214 to February 24, I think, would be a more suitable time.

The next point is regarding the whole issue of name changes. The current Representation Act includes provisions that if a name changes federally, it also changes provincially. I know at least one member here who was sort of caught in that recently, where the riding name changed federally, so the name changed provincially.

Ms. Churley: Without consultation.

Mr. Hall: Without consultation. Actually, that name change is up for debate in Ottawa currently: Toronto-Danforth to Danforth-East York-Riverdale, as well as three other bills that are currently pending regarding federal name riding changes. So I think that if you're going to use the same boundaries and the same boundary lines, it makes sense to keep the same names. There should be some provision put into Bill 214 for that.

The last point is a fairly minor point. Up until the last Representation Act, every Representation Act that has ever been passed by the Legislature included the names and boundaries of all the provincial ridings. With Bill 214, if it passed unchanged, if someone wanted to know the names and boundary lines of the new ridings, they would actually have to unearth copies of the Canada Gazette from 1996 and from 2003. My simple solution would be just to add the riding names and boundaries to the bill as an appendix.

Those are my seven recommendations. I'm open to questions.

The Chair: Thank you very much. We should have time for two questions from each party. Mr. Sergio.

Mr. Mario Sergio (York West): I can't resist asking a question, since you seem to be well versed with the system.

Mr. Hall, you mentioned voters deserve to know, and I guess this is part of our process here as well. Some European countries use a number in front of the candidate's name, together with the political party. Would you agree that perhaps we could make it easier to get to know a particular candidate or who to vote for if we were to attach a number to a particular candidate's name?

Mr. Hall: I believe it already is in provincial elections. I believe there are numbers on the ballots.

Mr. Sergio: It is? I didn't see that.

Mr. Hall: I agree with you. I think, yes, that would be a good idea. But I think it already is current practice.

Mr. Sergio: It is? Not that I know of.

The Chair: Thank you.

Mr. Sergio: But you would go for that?

Mr. Hall: I think that's a very good idea, yes.

The Chair: Thank you. Mr. Hardeman.

Mr. Hardeman: Just a very quick question: You mentioned the issue—there's been a lot of debate about that—of the political party on the ballot. I recognize that the principle of our democracy is that you elect the candidate, and the party that elects the most candidates becomes the winning party and the leader of that party becomes the leader of the entity in the province, or federally.

We also have in the past—well, I suppose since time began—people changing parties after they were elected. Do you think that it would be required, if you put the name of the party on, that there is some commitment that when I run as a Conservative, I stay elected as a Conservative? If I don't want to be a Conservative member, I have to resign and run again?

Mr. Hall: I didn't know that you were considering changing political parties.

Mr. Hardeman: Oh, this is hypothetical. But I think it becomes important. I think the people are entitled to as much information as possible, but I think there's also a need for politicians to be held accountable for what they're telling people during an election.

Mr. Hall: I think that if a member decided to change parties, they should resign and run under their new colours. Actually, the provision regarding by-election dates would make that fairly easy, because if it was politically inopportune for the current government, they couldn't just let them dangle in the wind for six months. But I'm not sure if that could be enshrined in law.

The Chair: Mr. Miller.

Mr. Miller: Thank you for your presentation. You've obviously spent a lot of time and made some suggestions, most of which I think make a lot of sense.

I have a question to do with fixed election dates. On another committee on which I'm sitting, the select committee on electoral reform, we had the Chief Election Officer for Ontario, John Hollins, come before us a couple of weeks ago. One of the recommendations he made on the issue of voter participation was that the fixed election date should be on a weekend, on a Saturday, not mid-week. Actually, he was backed up by another person who came before the committee who cited an Elections Canada survey that showed that the number one reason why people are not participating in elections is that they're too busy. So it seems that there is some merit in that suggestion, and I was just wondering if you have any comments on that.

Mr. Hall: It's not an area I know a lot about. What I would suggest is that perhaps they could test it—I don't know what changes would be required—in a by-election. I know there is a provision in the current Election Act that the Chief Election Officer, with approval of the

parties, can use by-elections as a testing ground for changes to election procedure. So that might be a good way that they could test it out and see whether or not there would be a benefit to doing that.

The Chair: Ms. Churley.

Ms. Churley: Thank you very much for your very interesting and informed presentation. Were you here when Dr. Williams gave his presentation?

Mr. Hall: Yes, I was.

Ms. Churley: There are a lot of issues here, but one in particular: Do you agree with him that there is an inherent problem in having two different methods by which we are mandating boundaries now? This bill will allow a different system to mandate the northern boundaries, as opposed to the rest of the province, which is still aligned with the federal boundaries. Do you agree that that's a problem, and do you have a suggestion as to what we might do to fix it?

Mr. Hall: I don't think that's a particular problem. I think that it's up to the Legislature, obviously, to decide what are the terms of reference for where the riding boundaries should be created. I think that there should be an independent commission, whether it's piggybacked on the federal commission or a separate provincial one. But I don't think that that's a major concern. In terms of just whether 11 seats is proper in the north or 10 or 12, for this particular bill it's a moot point, because it was a commitment in the throne speech. I think that the Ontario Legislature should retain the right to decide how many members it's going to have and set the terms of reference for where the boundaries should be drawn, but I still think it should be an independent commission that actually does the—

Ms. Churley: But wouldn't you say, therefore, for the entire province, not just for one piece of it? Those of us from southern Ontario tend to think that that's not exactly equitable and fair. There are different rules for different parts of the province.

Mr. Hall: True, but I think it's maybe starting from two different places but ending up in the same place. Just looking at the boundaries that were chosen by the federal commission last time, based on the populations they had to work with, I think they did a very good job.

The Chair: Thank you for coming in today. While the Chair would be pleased to share with you some 401-avoiding commuting tips, the Chair also strongly suggests the excellent GO service at Meadowvale and Streetsville, soon to come from Lisgar.

1130

JACK SIEGEL

The Chair: Our next deputation will be from Jack Siegel. Mr. Siegel, as a complete stranger to this process, I'd like to welcome you.

Mr. Jack Siegel: Yes, a total and complete stranger to appearing before a provincial legislative committee.

The Chair: Let me explain to you the procedure. It's really not very difficult. You have 20 minutes to make

your deputation. In the event you leave any part of that unused, then it'll be divided among the parties for questions. Please proceed at your convenience.

Mr. Siegel: Thank you very much, sir.

By way of introduction, particularly to the three members of the committee to my right—I know most of the members to my left—I should make it very clear that I'm here in my personal capacity today as somebody who is quite interested in election law, but I am a very active Liberal federally and provincially.

By way of background, I am presently general counsel to the Ontario Liberal Party. I was the chief returning officer for one very late-night convention that elected Premier McGuinty as the leader of our party. I act on behalf of the party on the Chief Election Officer's advisory committee, something that I would highly recommend committee members learn more about if you're not familiar with it already, and I've acted as senior election counsel to the central campaigns federally and provincially since 1993.

Again, I stress I'm here on my own. I have not cleared my remarks with any of the powers on high to this side of the table.

I'd like to talk first about fixed election dates. Quite frankly, I think it's a fine idea whose time has come. In the last election campaign, as one of the people attending in our party's war room in the days leading up to the issuance of the writ, I couldn't describe the amount of hand-wringing and anxiety over just when the Premier was going to see the Lieutenant Governor. Just a few hours of lead time in knowing that the writ is issued can make a huge difference in booking advertising time. Any party that wants to take a chance because they think they know what the Premier is about to do is taking a chance on having a lot of commitments that they can't properly use at a later date.

But certainty has another side to it, advertising in particular. We have a blackout period right now at the beginning of campaigns for about a week. An American campaign, on the other hand, that has fixed election dates, works on roughly a 75-day cycle. They will start advertising most of their campaign process gradually, but building, as early as Labour Day. If that holds true in Ontario with a fixed date of the first Thursday in October, we could be looking at advertising blasts throughout most of the summer. I have to ask, do any of us—voters, politicians, campaign organizers; self-interest here—really want a campaign that runs that long? You should also take into account that this pre-writ phase, which could conceivably run from Canada Day to Labour Day, would have no spending limits. A well-heeled party could spend as much as it wanted without constraint during that period, subject only to its bank account.

I'd urge the committee to consider two possible adjustments that might accommodate this kind of thing. One might be to lengthen the writ period as part of fixing the election date, possibly to 75 or even as many as 90 days, and have it start perhaps fairly close to Canada Day, with a lengthy advertising blackout that would

apply to parties, third parties, candidates, everybody. In other words, we'd have a quiet period for two thirds of the writ. Another possibility—it might go a little more outside of convention still—would be to have a pre-writ advertising blackout imposed, the same concept as exists in the Election Finances Act, but where the election is held on the fixed date, campaign advertising paid for by parties, candidates and third parties would be prohibited for 60 days beforehand.

A second aspect of fixed election dates would be consideration of when nomination day is. On a 29-day writ—presently, and for quite some time in Ontario even when it was longer—nomination day is day T minus 14. That allows a very short window for advance polls. Ballots have to be printed for the first advance poll within 48 hours of the deadline, and there's only a total of six days available for advance voting in the returning office and elsewhere.

If we know when the day is, it's not as if we're getting out of the starting post on day 29 anymore. It seems to me that it might be reasonable to advance nomination day, at the very least, up to day 21. Allow a larger window, allow greater opportunity for people to vote in the returning offices, and for your own interest, I suppose, for you to know who your opponent is.

Moving then to the subject of real-time financial reporting, it's a concept that I certainly support, but I do have some concern about the administrative burden that this would place on party staff and volunteers in all parties. On a five-day turnaround, the potential for an innocent error is rather large. The potential for somebody simply to miss a deadline due to illness, particularly in a more volunteer-driven leadership campaign, is substantial.

As well, I'd like to point out that the \$100 threshold that is included in the bill would seem to have its root in the 1975 Election Finances Reform Act. It hasn't been adjusted since then, as the reporting limit under the Election Finances Act. It seems to me this that would be a perfect opportunity, as we expand the scope of reporting, to catch up with the times and modernize that limit. I would suggest a reporting threshold, for all purposes of election finances, of \$500 to \$1,000.

There's been a call, and I'm aware of a private member's bill, for constituency associations to be included in the notion of real-time reporting. With the greatest of respect to the member behind that bill, I'd urge some caution in that regard. Constituency associations are 100% volunteer-driven operations. As somebody who has worked in every aspect of riding associations from rank-and-file member through the executive—I've been a CFO for a campaign, and I've been legal adviser to CFOs in many campaigns. CFO is the one political job I absolutely refuse to do. I think that refusal would be much more contagious if you impose a five-day turnaround on even small donations upon volunteers. Perhaps if the whole thing is moderated, it's something that could be explored at a later date, but I would urge the greatest of caution.

With respect to the reporting timelines, the five-day turnaround: Under the federal system, the only other one that I'm aware of in Canada that requires reporting more than annually, it's a quarterly cycle. No province has a financial disclosure requirement—again, to the best of my knowledge—that requires more frequent reporting than annually. I'd suggest that a 30- to 60-day reporting turnaround would result in an immense reduction in the administrative overhead of these processes, and the data that would be released would still be quite fresh for public consumption and for any political advantage that any partisan might want to take of the situation.

With respect to penalties—and this is the last point I'd like to raise—it's an odd provision. As a lawyer, you don't see many statutory provisions that say that if one person does something, another person is convicted and pays a penalty, but this bill does that. It has a twin-edged penalty: If the CFO of a party or a leadership campaign knowingly breaches the act, not only is that individual, the person who did something wrong, liable for a fine of up to \$5,000, but the party or leadership candidate is guilty of an offence and is subject to a penalty of up to twice the amount of the contribution at issue. Now, if you look at the federal elections act, it has some pretty onerous provisions where somebody, such as an official agent federally, fails to meet a timeline, a member of Parliament can lose their right to sit in the House of Commons if the deadline is not met. But there's a relieving provision in the act. The candidate, as opposed to the CFO or official agent, is not liable for these penalties if "it occurred without his or her knowledge or acquiescence; or he or she exercised all due diligence" to prevent it from happening. I would suggest that a similar provision should go into this legislation with respect to both the parties and the candidates for leadership who would be affected. If you do all you can to prevent an offence from taking place, it seems to me nothing short of bizarre to say that you still have a penalty to pay.

Hopefully, I've got some time to take questions.

The Chair: We should have time for about two to three minutes of questions per party, beginning with Mr. Hardeman.

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Mr. Hardeman: Thank you very much for the presentation. I don't know if you were here when we started the meeting. Some of the concerns you've brought up, I've had as I was reading the legislation. I appreciate it and hope the government is looking at that, that some of those changes can be made to make it more workable.

Mr. Siegel: Excuse me. I need to stress that I'm not here for the government. I've had conversations—

Mr. Hardeman: No, no. I said I hope that they're listening to you.

Mr. Siegel: I thought you said you appreciate—

Mr. Hardeman: Apart from the fact that there is always the tendency, if you are working for them, that they wouldn't listen to you, I'm sure that as an individual with your knowledge, they'll listen to your presentation and look at changing some of the things that are in there,

and particularly the disclosure clause. First of all, the low threshold, at \$100, I think is going to be very difficult to manage and follow up on. I don't think the parties have the staff. I don't think Elections Ontario has the enforcement capabilities of making sure that everyone has reported in five days, not six. I think that's one of the big issues.

I also appreciate the comments about being found guilty of something that you didn't do only because you didn't pay enough attention to it happening. I suppose there's a law sometimes that the buck stops at the top, so someone gets caught with it.

The fixed election dates: The one I'd like to hear a little bit more about is the issue of continual campaigning. One of your suggestions was that you would maybe put in a blackout period pre-writ, or prior to the election being called. Is that not a problem with constitutionality or freedom of speech? If there is no election, how can you say that no one can talk about the election? Furthermore, would there not be a problem with the government being able to do whatever message they wanted to get out during that period, using taxpayers' money and putting the province of Ontario's name on it, and then no one else could use it—I don't say this government, but any government. Your comments on that?

Mr. Siegel: On your latter point, I'd like to thank you for the opportunity to promote my friends who have legislated against any action of having government advertising like that.

Mr. Hardeman: They just wouldn't put the government's name on it.

Mr. Siegel: If they're spending government money, they're accountable.

On the second question, the charter issue and limitations conceivably on freedom of speech, I've considered that. That's why I put that as an alternative. I think it would need to be explored. I'm more comfortable with the constitutionality of an extended writ period to cover off my concern. But if I had that brief to argue before a court, I would say that the mischief of the extended campaign and the lack of financial coverage before the writ is sufficient to make that restriction demonstrably justifiable in a free and democratic society, and that it would escape charter scrutiny as a result.

The Chair: Ms. Churley.

Ms. Churley: Thank you very much for your presentation. On that note, you walked right into that one. Everybody here knows what I mean.

I thought it was passing strange that the Conservatives stopped putting the signature of the minister responsible for elevators on the licence in the elevators. I got a lot of bang for my buck having my name on every licence in an elevator in Ontario.

Mr. Duguid: Some are still there.

Ms. Churley: Some are still there, and I warn people not to go into those elevators. They haven't been inspected in a while. But I still get the jokes from time to time: "Ms. Churley, I go up and down with you every day." Everybody thinks they're original when they say it.

You're coming at this as a party person, and you're coming at it mostly from a practical point of view: how this would work for the parties. I think it's good to have it looked at from that perspective as well as what's best for the people.

I wanted to come back to real-time disclosure. I agree with you about the smaller amounts, but I do think that riding associations—and perhaps there could be some different rules around it and limits raised a bit—should also have real-time disclosure, because you know as well as I do that you can get some of the donations in through the back door through riding associations. What would you propose? Not leave them out completely, I would assume.

Mr. Siegel: It seems to me that if I've identified the concern you raise correctly, it's of the riding association not so much spending money locally but transferring large donations to the central party and escaping scrutiny. Am I correct?

Ms. Churley: Yes, that's right.

Mr. Siegel: Under the federal elections act, which is the scenario where I was an official agent, there is a practice that could address that, which is that where the riding association locally transfers funds to the candidate, the riding association must disclose to the candidate's official agent the source of the funds and the names and addresses of any contributor of more than, at the time I did it, \$100—it's now \$200—of those funds.

It seems to me that a similar requirement on constituency association transfers to a central party could meet your goal, rather than place the burden on the grassroots volunteer who has just finished a bookkeeping course and is anxious to try out their skills and who is now biting off a lot more than they can chew. I'd suggest that if a \$4,000 contribution comes into the riding association earmarked for the central, then the central, when it gets that money, would have the burden of identifying who it came from, not just the constituency association.

The Chair: Ms. Mossop.

Ms. Mossop: I want to thank you very much for bringing your grassroots expertise to this discussion, because there's no doubt that that's where a lot of the impact is felt. Maybe we haven't had as much input from that level as we should, so thank you for that.

I just wanted to get some clarification from you around the fixed election date, which you were talking about. If I understand correctly, you're talking about a longer blackout period or a longer campaign period or both. My concern about the longer campaign period is voter weariness. I think that's why shorter campaigns were moved toward. Can you maybe give us a bit more insight or direction as to how that might affect the grassroots and the volunteers?

Mr. Siegel: I think we have already bought into increased voter weariness with a fixed election date. Let's assume that we play out the October 4, 2007, scenario. There is no doubt in my mind that the campaign is not going to start the day the writ is issued; it's going to start when the organizers think it ought to start. Your

campaign managers are going to say, "OK, I need you in the street on August 1." Without controls, ads are going to go out and you're probably going to want an initial canvass of your riding before the writ is issued. The longer campaign period, I think, would almost be irrelevant to that. You're going to start when you're going to start.

If you set a 120-day campaign period, no organizer or candidate in their right mind will be going door to door for four months. It's going to develop into a natural flow of, when is it best strategically to start? We might not want to put the leader of our party on tour in July, or not a heavy tour with daily events—I don't think the media would pay attention, quite frankly—but certainly by the third week of August, whether we're in a writ or not, I'd lay a safe bet that the leaders of all three parties are going to be pretty busy.

The Chair: Mr. Duguid.

Mr. Duguid: Just briefly, because I know there's not a lot of time left, I was interested in your comments on constituency associations, because I know in your experience you've had an opportunity to work with a number of them. I think sometimes we think of constituency associations as associations where there are members elected, but we forget that there are a lot of associations out there where there is no member elected, there's no candidate even identified; there might be one or two people who, just through paperwork, are keeping it going. Maybe you can just expand a little bit on your concerns about those kinds of riding associations if they were to be subjected to some kind of a five-day reporting mechanism.

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Mr. Siegel: I quite frankly think that there will be more failures to meet the deadline than there will be successes. It's really that simple. I expand upon some of this in the material I provided in writing. I would eventually guess that in the first year of this process, every riding association will probably manage to twist somebody's arm into being the CFO. In the second year, there are going to be riding associations wondering how they can stay in business, or they're unable to stay in business, because nobody will serve.

The Chair: Thank you very much for coming in, Mr. Siegel. That concludes our time.

GREEN PARTY OF ONTARIO

The Chair: The Green Party, Rob Newman. Good morning.

Mr. Rob Newman: Good morning.

The Chair: Just to give you an idea of the guidelines you should follow, you have 20 minutes for your deputation. You can use all or part of that. If you leave any time, it'll be divided among the three parties to ask you questions. The floor is yours. Please proceed.

Mr. Newman: Mr. Chair, members of the committee and guests, thank you for inviting me to speak to you today about Bill 214. We recognize this bill as another feather in the cap of the current government's commit-

ment to democratic renewal in Ontario, and we, the Green Party of Ontario, are here to help you keep your commitments. I'll speak to you today briefly about two things we like about this wide-ranging bill, one thing we'd like to see removed and another we'd like to see added.

To begin, the Green Party of Ontario is extremely happy to see an item from our platform in 2003 on its way to becoming law in Ontario. Fixed election dates allow citizens the ability to plan their lives around their desire to participate in the electoral process as candidates or campaign volunteers. For example, younger employees can now plan ahead for time off work, and mothers and fathers can now arrange for daycare well in advance of a campaign. We believe that with fixed election dates, every party in Ontario will be able to present a wider and more representative slate of candidates in 2007. Again, we congratulate the current government for trading away what used to be an advantage of the sitting government in exchange for greater participation in the democratic process by more citizens.

The readjustment of electoral boundaries is work that we respect needs to be done from time to time to reflect population changes in various regions. We believe the current bill strikes a compromise between the need to align as many provincial boundaries as possible with their federal counterparts, and also the need to address a shrinking population in northern Ontario and what would otherwise have been the expansion of already overly large ridings.

However, the increasing overrepresentation that northern residents will now have despite their shrinking population points out one of the problems with our current first-past-the-post electoral system. Much of the work here may be undone or even unnecessary depending upon any recommendations that come out of the citizens' assembly and the acceptance of those recommendations by the people of Ontario. Of course, the real problem here is a shrinking northern population, but that's not what we've been asked to discuss today, so I'll leave that alone.

The Green Party of Ontario believes that the portion of Bill 214 mandating real-time reporting of contributions over \$100 is an example of political posturing generated by a winner-take-all voting system spilling over, to ultimately be borne by the taxpayers of Ontario. Current election finances law requires the publishing of any contributions in aggregate over \$100 at the end of each year. Real-time reporting will only increase the work of Elections Ontario to collect this information year-round and the work of political parties to report it. Both of these cost taxpayers in the end.

We know that unions that support nuclear and coal make large contributions to the NDP. We know that developers and land speculators make large contributions to the Liberal Party of Ontario. We know that banks make large contributions to the PC Party. Knowing whether or not these contributions happened last week or this week does not address the problem of access to money that we believe is at the root of this discussion.

The Green Party of Ontario would rather see this item for real-time reporting struck from Bill 214 in favour of a more fundamental rethink that will take place before the citizens' jury on campaign finance reform. A citizens' jury was made possible with the passage of Bill 213, as was the creation of the citizens' assembly on electoral reform. We look forward to speaking more to this issue of campaign finance before the citizens' jury and again remind you to keep your commitment. That's what we're here to help you do.

Finally, we'd like to ask the committee to include in Bill 214 the fine work done by Mr. Richard Patten in his private member's Bill 76 to include on the ballot at election the name of the political party endorsing a candidate. I've spoken with both Mr. Patten and the parliamentary assistant for democratic renewal, Dr. Kular, about this, and they each believe it to be a natural fit. Bill 214 will open up the Election Act, as will Bill 76. Including the item in Bill 76 as part of Bill 214 can only result in more efficient government on your end and a fairer ballot for voters in 2007. It's a great example of the elusive win-win we are always looking for in politics.

To close then, here is a summary of our recommendations: Stay true to your commitment to implement fixed election dates in Ontario, as Ontarians will get a more representative slate of candidates as a result; proceed with the readjustment of electoral boundaries, but understand that further readjustments may come out of the process of electoral reform; strike the requirements for real-time reporting from the bill, as they fail to address the true problem and only cost taxpayers in the end; and add to Bill 214 the items in Bill 76 currently before this committee to put on the ballot the name of the political party endorsing a candidate.

Again, thank you for inviting the Green Party of Ontario to speak to you today. We're preparing to be working alongside you as members of a future government, and we're excited to see that you are doing the same.

The Chair: Thank you very much. We should have time for about three and a half minutes per party, beginning with Ms. Churley.

Ms. Churley: Thank you very much for your presentation. I noticed that you mentioned all three political parties represented here getting donations from various sources. Does the Green Party have rules around who you can and can't accept donations from?

Mr. Newman: No, we don't, not as a party.

Ms. Churley: Not as a party. Are you suggesting that in electoral reform there should be limits on who can give parties money?

Mr. Newman: We actually like the limits. Something that we're working on as a party to make our policy at this year's upcoming AGM is to allow corporations and unions to give to the process by being able to give directly to Elections Ontario and still get a tax receipt, but not actually give to specific parties.

Ms. Churley: Would you be willing to take money from unions or big corporations, and have you to date?

Mr. Newman: You know, it's not the letters "I-N-C"; it's what they do.

Ms. Churley: But I'm curious: Have you, and do you?

Mr. Newman: We've taken money from corporations, yes.

Ms. Churley: I was just wondering. You mentioned three other parties that do take donations, but you didn't mention your own in there, and I thought that was interesting and that we need to get that on the record.

Mr. Newman: To clear up, it's not the letters "I-N-C"; it's what they do. If a corporation wants to make a million dollars composting, good for them, and I invite them to contribute to the political process in Ontario by giving to Elections Ontario to help that process, because that's really what I think they intend to do. If they're only giving to a certain party because they get certain access, I'd love to hear them admit that.

Ms. Churley: Then do you think that the Green Party would suggest that some corporations and unions should be banned from giving donations?

Mr. Newman: Oh, no. Again, if they want to contribute to the process in Ontario, I invite them to do so.

Ms. Churley: And would the Green Party then look at the money that's put into the pool you're suggesting and determine who you would or would not accept donations from, depending on their philosophy or what they're producing?

Mr. Newman: I believe that everybody has an equal say in what happens in Ontario; so do all companies and so do all unions. The money would be spread out to the parties in a per-vote subsidy, much like now but with a lower threshold.

Ms. Churley: I think I understand what you're saying.

In terms of real-time disclosure, you're saying that isn't the issue. One of the reasons I've been calling for that is that recently the Liberals have had huge, high-priced big dinners and some smaller ones where the Premier and the finance minister have been available at those events, in the middle of, say, the greenbelt legislation and those kinds of things. Wouldn't you say, therefore, that if people are buying that kind of access, it's important at least that the public know in real time, especially when it's happening right in the middle of new legislation?

Mr. Newman: I think the public already does know.

Ms. Churley: But they don't know who's giving it to them.

Mr. Newman: I don't think these donors are new. You can see them at the end of last year's return. We know it happens, and I don't think that real-time reporting addresses the root cause. It may be a short-term band-aid, absolutely, but it doesn't address the root cause. All it's going to do is create more work for political parties and, as Mr. Siegel said earlier, more work for CFOs in ridings.

The Chair: Ms. Mossop.

Ms. Mossop: First of all, I just want to take the opportunity to thank you very much for coming today

and making your presentation, but also to just commend the Green Party on its contribution to this debate and to democracy in general. I have to tell you that there was a Green Party candidate in my riding in the last election who made an excellent contribution at every debate and to the whole process. So I commend you on that. I'm looking forward to your participation as we go forward.

1200

This is really an evolutionary process, I think. People have talked about, "Should we do it all in a lump? Should we be doing pieces?" and all the rest. But I think what we're embarking on is something, as you can tell, that's very large and evolutionary, and we are doing it in pieces, but with an overall vision and with a direction of evolving into the future. So thank you for that.

Mr. McMeekin: I think you had something you wanted to ask.

Mr. McMeekin: I just want to join my colleague Ms. Mossop in thanking you for coming. I really appreciate what you've said here. You obviously have given it a lot of thought.

I want to ask you a question about the real-time reporting, because frankly, I've had some problems with it too. Personally, I think the amount is probably too low, and some people have made the comment, "Is the time period perhaps too short?" I think even an insider has suggested that there may be some truth to that.

Let's assume a worst-case scenario, that real-time reporting maybe does have an element of political posturing—I'm not conceding that it does, but let's assume it might—and therefore is going to stay in the bill. If it were to stay in the bill, what would your suggestion be with respect to appropriate real-time reporting and the amounts that would be appropriate to have reported in a real-time way?

Mr. Newman: Having to choose a number is difficult. I didn't look at it like that before I came. I mean, to say \$500, is that really the bar? I hadn't looked at it.

I don't know about the amount. Even the five days—I respect the work that Elections Ontario has done to facilitate it. They've done good work. They've given people a spreadsheet that offices can fill out to send back in. They've done what they can.

The thing is, if it's the law, I respect that all of the parties in the province are going to adhere to the law. What it means is that they'll end up not doing other work or they will end up having to hire another person to do the work. So it can be done. It's just, what are we giving up by having to do it for only \$100?

Mr. McMeekin: Yes, I want to give you your shot, though. Assuming it's going to be there, what would your best advice to us be?

Mr. Newman: Maybe something like \$1,000. You look at a party contribution limit as \$8,400 in a year. For CAs, it's only \$1,000, which is not a relatively large amount of money. Something I do respect about our elections law is that elections are relatively cheap to run. They could cost a lot more, but the limit is only \$80,000, because they're relatively low-tech affairs.

Mr. McMeekin: Just so I'm clear, would that be \$1,000 within five days or would you extend the reporting period as well?

Mr. Newman: Something more than—maybe two weeks; 10 business days may be a little more reasonable, yes.

Mr. McMeekin: Thank you. I appreciate that.

The Chair: Mr. Miller.

Mr. Miller: Thank you, Rob, for coming in. You're spending a lot of time around Queen's Park. You were here a couple of weeks ago before the select committee.

A couple of questions, first of all to do with the north, because I represent one of the 11 northern ridings. As I said before, I'm really a beneficiary of this bill, in that my riding more or less stays the same, and certainly, as most members would probably say, that's something you like to see. You like to be doing work in the riding you're going to be elected in.

The only problem I have with this process that we're going through is that the decision to keep 11 northern ridings is being made by the government, not by an electoral boundaries commission. Now, it may be that this is just for this election, because if the government follows through on its promise of a citizens' assembly, we might be having a referendum on October 4, 2007, that will change the system.

But I'm just wondering if you have comments about the fact that the government is deciding to keep 11 northern ridings, not an elections boundary commission.

Mr. Newman: Well, they were the boundaries, as determined in a previous readjustment process. I'm not sure whose government it was, but to say, "The federal government is looking at these things anyway. Let's save some cost and adjust, because 103 is a pretty fair number of MPPs"—again, given that we're looking at a more fundamental change in the way we vote anyway, I think a lot of this work will probably be undone. We look at something that's—

Mr. Miller: So it's possible that it'll be in place for six years at least, though, because the next election, in October 2007, would be based on the old system, with a referendum that might change it for the election afterwards.

Mr. Newman: I find myself in a difficult position. On the one hand, are citizens in the north going to be overrepresented? Yes. But again, the deeper problem there is, why is the population shrinking? I can understand the point that if they have one less representative, that just contributes to the problems of why they're not getting the services and the population is shrinking. So I respect that government's doing something to address that, and it may be for six years.

Mr. Miller: As a step, a sort of interim measure.

Mr. Newman: I think it's something we could live with in the short term.

Mr. Miller: On fixed election dates—I brought this up before—It was suggested by the Chief Election Officer that Saturday makes more sense than Thursday because of an Elections Canada survey that showed that

the number one reason people don't vote is that they're too busy, which is a pretty poor excuse; however, that's what the survey showed. Do you think Saturday should be considered?

Mr. Newman: Again, that's another item we're putting forward at our AGM in October this year, to actually have elections be on a Saturday. That actually comes from the example, I believe, of Australia, where elections are on a Saturday. One of the great benefits is that because—I know, growing up here in Ontario, that voting in elections was something my parents did when I wasn't around because I was in school and I didn't see it. When you talk with people in Australia, with elections being on Saturday, they grow up going to the polls with their parents. It becomes something that people just do.

Mr. Miller: Of course, in Australia it's mandatory as well.

Mr. Newman: It's also mandatory. But independent of it being mandatory, again, because the kids go with them, it's not this thing that adults do over there and what is it? Kids understand what it is when they're four, eight, 13. They're going to the polls with their parents because it's on a Saturday.

Mr. Miller: I certainly can't see a downside to Saturday. Can you?

Mr. Newman: There are going to be some people, like essential services, who find it difficult to get any day off. We still think it's important to keep it to one day, though, and Saturday—we like that idea.

Mr. Miller: Is the reason that you want to have the name of the political party on because it enhances the chances of the Green Party?

Mr. Newman: I think it enhances the chances of all the parties. There are some people in this province who vote for the party because they like the leader, and they may not know the local representative. Northern ridings are a great example. They're so large. A lot of people there may never meet their MPP, but they know they like what the party does.

Mr. Miller: On a last, quick point: the length of a campaign. As an elected politician, the idea of a 75-day campaign is not something I would look forward to, that's for sure. I like the idea of 30-day campaigns. But at the same time, there need to be some rules about either a blackout period for advertising before or—there need to be some rules. Have you got any ideas to do with that?

Mr. Newman: Yes. When you get fixed election dates, when everybody knows—the campaign started the day they announced fixed election dates. Let's face it, we know when the date is. They can put a flag in the sand in the future and they can work toward it. Again, it's something that's of great benefit. I can see the need, though, to do a blackout around election advertising.

Interjection.

Mr. Newman: I think 28 days works well for people.

Mr. Miller: So just spending on the election only in that period, and just a blackout. How long would the blackout extend?

Mr. Newman: We hadn't thought about that. It's an interesting question, though.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. It's much appreciated.

I was just going to the comments about who donates to which party and who we would accept or not accept donations from. You made the comment about the Green Party supporting the principle of people donating to Elections Ontario and it being distributed to all parties. Could you explain that to me a little bit more? Recognizing that corporations, unions and everyone else, the same as you and I, donate to a cause because we believe in a cause, how would that work if you donated to Elections Ontario to support your cause?

Mr. Newman: I would still think that individuals have the right to donate to a cause, to a party, for that matter, because elections are for individuals. Elections are for citizens, so citizens and residents should still be able to contribute to a party with the same limits. It's just not for corporations and unions. They're organizations, and I believe they would support the process. I think that's

why they give now. Again, if it's different, that would be interesting to find out afterwards. It's coupled also with lowering the bar on what the post-election subsidy is to parties now. I think that for any riding in which you get 15% of the vote, you get five cents per elector. Lowering that bar would require more money, and it would come from having corporations and unions give directly to the process. I'm happy if corporations want to contribute to democracy in Ontario. Good for them, if they want to do it.

The Chair: Thank you very much for your deputation here today.

Is Susan Smith in the room? As our final deputant is not in the room, we will take a five-minute recess to see whether or not the final deputant can be located. The committee stands recessed until 1215.

The committee recessed from 1210 to 1215.

The Chair: Can the committee just come to order for what may be a few moments. Is Susan Smith in the room? Going once, going twice. Not seeing our final deputant, I declare this hearing adjourned.

The committee adjourned at 1216.

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Wednesday 5 October 2005

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Mercredi 5 octobre 2005

Standing committee on the Legislative Assembly

**Election Statute Law
Amendment Act, 2005**

Comité permanent de l'Assemblée législative

**Loi de 2005 modifiant des lois
en ce qui concerne les élections**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Wednesday 5 October 2005

Mercredi 5 octobre 2005

*The committee met at 1007 in room 228.*ELECTION STATUTE LAW
AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
EN CE QUI CONCERNE LES ÉLECTIONS

Consideration of Bill 214, An Act to amend the Election Act, the Election Finances Act and the Legislative Assembly Act, to repeal the Representation Act, 1996 and to enact the Representation Act, 2005 / *Projet de loi 214, Loi modifiant la Loi électorale, la Loi sur le financement des élections et la Loi sur l'Assemblée législative, abrogeant la Loi de 1996 sur la représentation électorale et édictant la Loi de 2005 sur la représentation électorale.*

The Chair (Mr. Bob Delaney): Good morning, ladies and gentlemen. I call to order the standing committee on the Legislative Assembly. We're considering Bill 214, An Act to amend the Election Act, the Election Finances Act and the Legislative Assembly Act, to repeal the Representation Act, 1996 and to enact the Representation Act, 2005.

We'll be meeting this morning for the purposes of commencing clause-by-clause consideration of the bill but, pursuant to the report of the subcommittee, each party, if desired, may make an opening statement of up to five minutes—rigidly timed, of course.

Mr. Norm Miller (Parry Sound-Muskoka): I won't use the full five minutes, but I did want to make a couple of points since our last meeting. Of course, Bill 214, as we all know, does three things: It maintains 11 northern ridings, it sets a fixed election date every four years—the next one to be October 4, 2007—and it brings about real-time disclosure of political donations.

We've had some public hearings and input from the public on this bill, and we've had some, I think, reasonably rational discussion based on the presentations that have been made to us. I wanted to raise the point that it's unfortunate that there have been some Liberal members in the north who have not represented the discussions that have gone on in this committee fairly. In fact, the member from Thunder Bay-Superior North and the member from Sault Ste. Marie both released press releases, which were then reported in the north, saying, "... NDP, Tories Trying to Take Away Northern Representation." If you look through the Hansard from the

meetings we've had previous to this, there was rational discussion about whether an electoral boundary commission makes sense. I raised that question about the government deciding where electoral boundaries would be versus an electoral boundaries commission, but in no way have I or my partner here, Mr. Hardeman ever suggested that there should be less representation in the north. And I think it's safe to say that the representative of the third party, Ms. Churley, the member from Toronto-Danforth, would probably, if she were here, take offence with the press releases that were sent out.

I just wanted to make the point that I think it's unfortunate that politicians look on this as an opportunity to make partisan gains and to not really tell the story the way it would come out if you read it in Hansard, and maybe—I don't want to say "mislead," but certainly give the impression that members were advocating for fewer ridings when in fact they were not advocating for fewer ridings. I think it's unfortunate, particularly when the government is talking about democratic renewal and more accountable government and things like that, that members are becoming very partisan on this issue. I thought the discussion we have had has been reasonably rational. So I just wanted to make that point, that it's unfortunate that government members are making this partisan.

Ms. Jennifer F. Mossop (Stoney Creek): I just want to say that I too think that we've had some excellent discussion. We had tremendous input during the public hearings on this, and I think that a tremendous amount of thought, consideration, research and energy is going into this project.

As everybody knows, this bill is a small part of the larger effort at democratic renewal and the discussion that we will be having with the citizens' assembly and future work that is to be done as well. Essentially, I won't say any more, because we did have good opening statements at the public hearings, and it's probably time just to move on with business.

The Chair: Pursuant to standing order 78, are there any comments, questions or amendments to any section of the bill, and if so, to which section? I understand that there have been amendments filed with the committee dealing with a number of sections of the bill.

Ms. Mossop: I move that subsection 9.1(4) of the Election Act, as set out in subsection 1(3) of the bill, be struck out and the following substituted:

"Day for close of nominations and grant of poll

"(4) The day for the close of nominations and the grant of a poll where required shall be,

"(a) in the case of a general election under subsection 9(2), the second Thursday after the date of the writ;

"(b) in any other case, the third Thursday after the date of the writ."

Mr. Ernie Hardeman (Oxford): Not having compared it to the other one, could I get from the member reading the motion what the intent or what the actual outcome of this change will be? Is this where we deal with the holiday?

Ms. Mossop: Essentially, yes. As you know, we're moving to the concept of the fixed election date, and this is just to deal with any kind of holidays or issues around logistics.

Mr. Hardeman: It's a matter of, if there's a specific holiday on the Thursday that was designated as election day, this will then be the following Thursday. Is that it? Very good. Thank you.

The Chair: Shall the amendment carry? Carried.

Shall section 1, as amended, carry? Carried.

Are there any amendments to section 2?

Ms. Mossop: I move that subsection 34.1(3) of the Election Finances Act, as set out in subsection 2(4) of the bill, be amended by striking out "five" and substituting "10."

The Chair: Discussion?

Mr. Hardeman: I guess the question really comes—obviously this is changing the amount from the minimum of \$100, where it must be disclosed, and increasing it to \$500. In the public hearing process, one has to wonder. I think that the majority of suggestions—

Interjection.

The Chair: Just for your information, we would be on page 3 of your package.

Ms. Mossop: I was just saying, yes, we're on page 3. We've moved on to 3. We're not moving the other.

Mr. Hardeman: You went to page 3? You didn't deal with page 2?

Ms. Mossop: No, we're not moving that. We're on 3.

Mr. Hardeman: My question would be, what happened to page 2? It was an amendment put forward by the government, and I'm wondering why it's not being introduced today. Is there a reason for that?

Ms. Mossop: Just that the ongoing discussion around this, and looking at it, we felt that the original situation, as it stood, was the best in the interest of transparency.

Mr. Miller: Just for clarification, the motion we're talking about then—striking out "five" and substituting "10"—is that the number of days, then, for reporting?

Ms. Mossop: Yes. We're going from five to 10.

The Chair: Discussion? Shall the amendment carry? Carried.

Other amendments?

Ms. Mossop: I move that subsection 34.1(4) of the Election Finances Act, as set out in subsection 2(4) of the bill, be amended by striking out "five" and substituting "10."

The Chair: Discussion, if any? Shall the amendment carry? Carried.

Further amendments to section 2? Shall section 2, as amended, carry?

Mr. Miller: Just one question: What happens if the third party's not here and they have an amendment? What happens to their amendment?

The Chair: At the moment, the amendment has not been moved.

Shall section 2, as amended—oh, sorry. Mr. Hardeman?

Mr. Hardeman: Could I ask the clerk on the procedure of that? If the parties have all committed to and adhered to the rule that they put their amendments forward at the proper time, is there an assumption that that is then before the committee?

The Chair: The clerk advises that while the motions are filed, they are not in fact motions until moved by the member. If it is the unanimous will of the committee to take a recess, pending any arrival of Ms. Churley, that can happen. Is it the unanimous will of the committee to take a recess?

Mr. Miller: If I may, I think some effort should be made to contact the NDP to see if they want five minutes to get somebody here.

Ms. Mossop: I think that's fair.

The Chair: Then this committee will recess for five minutes before resuming to address section 2, as amended.

Mr. Mario Sergio (York West): Mr. Chair, if I may, can we delay it, deal with some of the others and come back to this one here if necessary? It's their motion, and they know how important it is to go on with the clause-by-clause and deal with the various motions. I'm surprised that no one is here. So to adjourn the committee, with respect to that, I would rather delay until later on, but keep on going with the agenda.

The Chair: Do we have unanimous consent to stand down section 2 and move to consideration of section 3? Ms. Mossop?

Ms. Mossop: I'm considering.

Mr. Hardeman: Mr. Chair, I would suggest that we take five minutes so we can find out whether someone is coming rather than stand it down and disrupt the natural flow.

Ms. Mossop: If we do five minutes, then we'll know one way or another, and then we can just get on with it.

The Chair: The committee is in recess for five minutes.

The committee recessed from 1019 to 1023.

The Chair: The standing committee on the Legislative Assembly will once again please come to order. We're considering section 2.

Ms. Churley, for your information, we've considered pages 2, 3 and 4 in your package, and I'm now looking for amendments to section 2. Do you have such an amendment?

Ms. Churley: Yes. Subsection 2(4) of the bill—is that where we're at? No, sorry. My amendment to subsection 2(4)—subsection 34.1(6.1):

I move that section 34.1 of the Election Finances Act, as set out in subsection 2(4) of the bill, be amended by adding the following subsection:

“Constituency associations

“(6.1) For the purposes of this section, a contribution received on behalf of a constituency association is deemed to be received on behalf of the relevant political party.”

I put forward this amendment because I've said many times in the Legislature and in this committee that, although there would have to be some processes put in place to help constituency associations, unfortunately, when it's left out, there are opportunities to get a political party's donations through the back door without the real-time disclosure. I forget the amount that it can go up to, how much you can actually give to a constituency association at any one time; therefore, I would like to make this motion so that we're dealing with all of the donations given to political parties and we can work out in regulations how support can be given to those constituency associations to get the donations out to the public in real time.

The Chair: Any other questions or comments? Shall the amendment carry?

Ms. Churley: May I have it recorded, please?

Ayes

Churley.

Nays

Hardeman, Kular, McMeekin, Mossop, Sergio, Wynne.

The Chair: I declare the amendment lost.

Shall section 2, as amended, carry? Carried.

Shall section 3 carry? Carried.

As section 4 is dependent on the passage of schedule 1, I ask the committee if there's unanimous consent to stand down debate on section 4 to consider schedule 1. Is there unanimous consent? OK. The debate on section 4 will be stood down and we'll move to consideration of schedule 1.

Mr. Hardeman: Thank you very much, Mr. Chairman.

I move that schedule 1 to the bill be struck out and the following substituted:

“SCHEDULE 1

“ELECTORAL BOUNDARIES COMMISSION (ONTARIO) ACT, 2005

“DEFINITIONS

“Definitions

“1. In this act,

“‘chief statistician’ means the Chief Statistician of Canada appointed under the Statistics Act (Canada);
('statisticien en chef')

“‘commission’ means the Electoral Boundaries Commission (Ontario) established under subsection 2(1);
('commission')

“‘electoral quota’ means the electoral quota that the commission recommends for the purpose of clause 13(1)(c); ('quotient électoral')

“‘federal return’ means the return certified by the chief statistician and described in subsection 12(1); ('état fédéral')

1030

“‘minister’ means the minister responsible for the administration of this act; ('ministre')

“‘northern Ontario’ means the part of Ontario that lies in the following 11 northern electoral districts, using the same boundaries as were in effect on October 2, 2003, but excluding the municipality of Algonquin Highlands:

“1. Algoma-Manitoulin.

“2. Kenora-Rainy River.

“3. Nickel Belt.

“4. Nipissing.

“5. Parry Sound-Muskoka.

“6. Sault Ste. Marie.

“7. Sudbury.

“8. Thunder Bay-Atikokan.

“9. Thunder Bay-Superior North.

“10. Timiskaming-Cochrane.

“11. Timmins-James Bay; ('Nord de l'Ontario')

“‘report’ means the report of the commission described in subsection 13(1); ('rapport')

“‘representation order’ means an order of the Lieutenant Governor in Council made under subsection 17(2).
('décret de représentation électorale')

“ELECTORAL BOUNDARIES COMMISSION (ONTARIO)

“Commission established

“2.(1) The Lieutenant Governor in Council shall by order establish a commission to be known in English as the Electoral Boundaries Commission (Ontario) and in French as Commission ontarienne de délimitation des circonscriptions électorales,”—however it's said in French; I don't say it very well—

“(a) within 30 days of the day on which this act comes into force, if no order has previously been made under this subsection; and

“(b) within 60 days of the publication in the Canada Gazette of the proclamation described in section 3 of the Electoral Boundaries Readjustment Act (Canada) that establishes an electoral boundaries commission for Ontario for the purposes of that act, if an order has previously been made under this subsection.

“Names of members

“(2) The order establishing the commission shall set out the names of its members.

“Notice

“(3) Upon making an order under subsection (1), the Lieutenant Governor in Council shall publish a notice of the order in the Ontario Gazette.

“Members

“3.(1) The commission shall consist of three members, namely a chair and two other members appointed in accordance with this section.

“Chair

“2) The Chief Justice of Ontario shall appoint the chair of the commission from among the judges of the Court of Appeal for Ontario or, after consultation with the Chief Justice of the Superior Court of Justice, from among the judges of the Court of Ontario.

“Other members

“3) The Speaker of the assembly shall appoint the two members of the commission, other than the chair, from among persons who are entitled, under the Election Act, to vote at an election to the assembly and whom the Speaker considers suitable.

“Eligibility of members

“4) No person is eligible to be a member of the commission while being a member of the Senate or House of Commons of Canada or a member of the assembly.

“Vacancy

“4.(1) A vacancy in the membership of the commission does not impair the right of the remaining members to act.

“Replacement

“(2) If such a vacancy occurs, it shall be filled within 30 days by appointment in the manner set out in section 3.

“Notice

“(3) Upon the making of an appointment under subsection (2), the commission shall publish a notice in the Ontario Gazette setting out the appointments.

“Deputy chair

“5. The commission may appoint one of its members as deputy chair who shall act as the chair if the chair is absent or unable to act or if the office of chair is vacant.

“Quorum

“6.(1) Two members of the commission constitute a quorum.

“Deciding vote

“(2) If there is an equality of votes at any meeting of the commission, the chair or person acting as the chair has a deciding vote.

“Remuneration and expenses

“7. Subject to the prior approval of the assembly by appropriation, the members of the commission shall receive the remuneration and reimbursement of their expenses that the Lieutenant Governor in Council by order specifies.

“Staff

“8. The commission may,

“(a) with the approval of the Lieutenant Governor in Council, establish job classifications, personnel qualifications, salaries, benefits and other remuneration for the persons that the commission considers necessary for the proper conduct of its affairs;

“(b) employ or contract for the services of the persons mentioned in clause (a); and

“(c) pay the salaries, benefits and other remuneration and expenses of the persons mentioned in clause (a) out of the money that the Legislature appropriates to the commission.

“Powers of commission

“9.(1) In performing its duties under this act, the commission has the powers of a commission under parts II and III of the Public Inquiries Act and those parts apply to an inquiry held under this act.

“Procedure

“(2) The commission may make rules for regulating its proceedings and for the conduct of its business, including rules providing for the conduct of an inquiry or hearing by one or more of its members.

“Agent of the crown

“10. The commission is for all purposes an agent of the crown.

“Immunity

“11.(1) No action or other proceeding for damages may be instituted against any member of the commission or person appointed to the service of the commission for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

“Crown liability

“(2) Despite subsections 5(2) and (4) of the Proceedings Against the Crown Act, subsection (1) does not relieve the crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

“PREPARATION OF REPORT

“Federal return

“12.(1) The government of Ontario shall request the chief statistician to disclose to the commission a return certified by the chief statistician showing the population of Ontario and the population of Ontario by enumeration areas as shown by the decennial census most recently completed under section 19 of the Statistics Act (Canada).

“Disclosure of information

“(2) The commission shall ensure that its members and persons that it employs or for whose services it contracts do not disclose the information in a matter contrary to section 17 of the Statistics Act (Canada).

“Report

“13.(1) Upon receiving the federal return, the commission shall prepare a report setting out its recommendations and the reasons for them concerning,

“(a) the division of Ontario into electoral districts for the purpose of representation in the assembly, except that there shall be at least 11 electoral districts for northern Ontario;

“(b) the description of the boundaries for each electoral district, the population in it as shown in the federal return and the name that the commission proposes for each electoral district; and

“(c) an electoral quota for electoral districts.

“Electoral quota

“(2) The electoral quota shall be not less than, and not more than 25% greater than, the average population in northern Ontario as shown in the federal return.

“Population per district

“(3) In preparing its report, the commission shall be governed by the following principles, subject to subsection (4):

“1. The division of the part of Ontario outside northern Ontario into electoral districts shall proceed on the basis that the population in each electoral district, as shown in the federal return, is as close to equal as is reasonably possible to the electoral quota, given the need for there to be at least 11 electoral districts in northern Ontario.

“2. The division of northern Ontario into electoral districts shall proceed on the basis that the population in each electoral district, as shown in the federal return, is as close to equal as is reasonably possible to the average population in each electoral district in northern Ontario.

“3. The division of Ontario into electoral districts shall, as much as reasonably possible,

“i. respect the community of interest or community of identity in or the historical pattern of each electoral district, and

“ii. maintain a manageable geographic size for electoral districts in sparsely populated, rural regions of Ontario or northern Ontario.

“Exceptions

“(4) The commission may depart from the principles set out in subsection (3) if it considers it necessary or desirable to do so for the reasons set out in paragraph 3 of that subsection but, in so doing, the commission shall make every effort to ensure that, except in circumstances that it views as extraordinary, the population in each electoral district, as shown in the federal return, remains within 25% more or 25% less of the electoral quota.

“Public hearing

“14.(1) Before completing its report, the commission shall hold at least one hearing in Ontario for the purpose of receiving representations by interested persons.

“Notice of hearing

“(2) The commission shall give notice of the time and place fixed for the hearing by publishing a notice in the Ontario Gazette and in at least one newspaper of general circulation in Ontario at least,

“(a) 10 days before the commencement of the hearing, if the order establishing the commission under subsection 2(1) was made by January 31st, 2006, and no order has previously been made under that subsection; or

“(b) 60 days before the commencement of the hearing, in all other cases.

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“Information for public

“(3) The commission shall prepare a statement of its proposal for the electoral quota and a map or drawing showing,

“(a) its proposal for the division of Ontario into electoral districts and their boundaries;

“(b) the population in each electoral district, as shown in the federal return; and

“(c) the name that the commission proposes for each electoral district.

“Access

“(4) The commission shall make available to the public, upon request and at no cost, the material described in subsection (3) at the office of the Chief Election Officer appointed under the Election Act.

“Right to make representations

“(5) Any person may make representations at a hearing mentioned in subsection (1), even if the person is not eligible to be appointed as a member of the commission, but the commission shall not hear any representation from a person unless the person gives notice in writing to the commission at least seven days before the commencement of the hearing.

“Time for representations

“(6) The commission may limit the time available for persons to make representations at a hearing mentioned in subsection (1) if it considers it necessary to do so in order to have sufficient time to complete its report by the time specified in subsection 15(1).

“Commission's discretion

“(7) The commission shall consider the representations made at all hearings held under subsection (1) but is not bound to act on them in completing its report unless it considers it appropriate to do so.

“Initial report

“15.(1) The commission shall complete its report and submit a copy of it to the minister, the Speaker of the assembly and the Chief Election Officer,

“(a) by February 28, 2006, if the order establishing the commission under subsection 2(1) was made by January 31, 2006, and no order has previously been made under that subsection; or

“(b) within 180 days after the day on which the order establishing the commission was made under subsection 2(1), in all other cases.

“Tabling and notice

“(2) The Speaker shall,

“(a) lay the report before the assembly if it is in session;

“(b) deposit the report with the Clerk of the assembly if the assembly is not in session; and

“(c) send a copy of the report by mail to each member of the assembly at the office assigned to the member in the legislative building.

“Deemed service

“(3) A member shall be deemed to have received the copy of the report under clause (2)(c) on the fifth day after mailing.

“Objection by members

“(4) Within 30 days of receiving the copy of the report under clause (2)(c), a member of the assembly may file a notice of objection with the Clerk of the assembly and in that case the government House leader shall refer the report to a standing committee of the assembly.

“Committee recommendations

“(5) The standing committee shall review the report and make whatever recommendations on it to the commission that it considers appropriate within 30 days of the referral to the committee.

“Form of recommendations

“(6) The recommendations of the standing committee shall be in writing and may include the maps or drawings that the committee considers appropriate.

“Final report

“16.(1) The commission shall consider the recommendations, if any, made by the standing committee of the assembly but is not bound to act on them in completing its final report unless it considers it appropriate to do so.

“Time for final report

“(2) Within 30 days of the day on which the commission receives the recommendations of the standing committee, the commission shall prepare its final report in accordance with section 13 and submit a copy of it to the minister, the Speaker of the assembly and the Chief Election Officer.

“Tabling and notice

“(3) The Speaker shall,

“(a) lay the report before the assembly if it is in session;

“(b) deposit the report with the Clerk of the assembly if the assembly is not in session; and

“(c) send a copy of the report by mail to each member of the assembly at the office assigned to the member in the legislative building.

“REPRESENTATION ORDER

“Representation order

“17.(1) Within 30 days of receiving the copy of the report under subsection 16(2), the Chief Election Officer shall prepare and submit to the minister a draft representation order that,

“(a) specifies the number of electoral districts in Ontario for the purpose of representation in the assembly;

“(b) divides Ontario into electoral districts for the purpose of representation in the assembly, except that there shall be at least 11 electoral districts for northern Ontario; and

“(c) describes the boundaries of each electoral district, the population in it as shown in the federal return and the name of each electoral district.

“Making of order

“(2) The minister shall forward the draft order to the Lieutenant Governor in Council that shall make the order within five days of receiving the draft.

“Notice

“(3) As soon as the order is made, the minister shall post a copy of it on the government of Ontario’s Web site on the Internet and publish a copy of it in the Ontario Gazette.

“Application of order

“(4) The order shall set out a statement of subsection (5).

“Same

“(5) Despite any successor to the Representation Act, 1996 or any other act, the order shall apply to,

“(a) the general election as defined in the Election Act next following,

“(i) the day on which the order is made, if clause 15(1)(a) required the commission to submit the report on which the order is based by February 28, 2006, or

“(ii) the first anniversary of the day on which the order is made, in all other cases; and

“(b) all subsequent elections of members to the assembly after the day on which the election mentioned in clause (a) takes place until the order is replaced by another order made under this section.

“Dissolution of commission

“18. The commission is dissolved on the day the Lieutenant Governor in Council makes the representation order.

“General

“Regulations

“19. The Lieutenant Governor in Council may make regulations,

“(a) specifying the powers for the commission that the Lieutenant Governor in Council considers are necessary or advisable to allow the commission to carry out effectively its duties under this act and that are in addition to the powers that the commission otherwise has under this act;

“(b) specifying other matters that the commission is required to consider in making its report, in addition to the matters set out in subsections 13(3) and (4);

“(c) allowing the Chief Election Officer to correct any error or inconsistency in the description of an electoral district in a representation order that is obvious on its face;

“(d) requiring the Lieutenant Governor in Council to amend a representation order to reflect a correction made under clause (c), specifying that the correction will not affect the application of the order under subsection 17(5) and requiring the minister to post a copy of the amended order showing the correction on the government of Ontario’s Web site on the Internet and to publish a copy of it in the Ontario Gazette;

“(e) requiring the Chief Election Officer to make available to the public upon request and at no cost a copy of the maps or drawings that the officer considers appropriate to show the boundaries of each electoral district as set out in a representation order, the population in it as shown in the federal return and the name of each electoral district;

“(f) respecting any matter necessary or advisable to carry out effectively the purposes of this act.

“Commencement

“20. This schedule comes into force on the day the Election Statute Law Amendment Act, 2005 receives royal assent.

"Short title

"21. The short title of the act set out in this schedule is the Electoral Boundaries Commission (Ontario) Act, 2005."

That's the schedule proposed, Mr. Chairman.

The Chair: Thank you, Mr. Hardeman. Mercifully, the schedule didn't require you to repeat the word "statistics" and add on "aluminium."

The Chair will entertain brief statements from each party on this schedule before taking a brief recess to consult with staff, beginning with you, Mr. Hardeman.

Mr. Hardeman: Thank you very much, Mr. Chairman. From the length of the schedule, we'll understand it is to create a commission. As we look at the bill presently, there are a lot of good things in it, but the problem we have is that this is the first time, or at least the first time in recent memory, that the government has actually taken the initiative to create the ridings without outside assistance, where it's being recommended by a third party as to where the lines should be drawn. We believe it should be done through an appointed commission, which should set the boundaries or at least make recommendations as to where the new boundaries in Ontario should go. I think that was heard loud and clear from almost all who presented to our committee; they thought it needed that impartial, third party look.

The other thing that was brought up by my colleague at the start of the hearings was the issue of the 11 northern ridings. I think the government has made a commitment that, whatever we do, we will continue to carry on with having at least 11 ridings in northern Ontario. I think this amendment will in fact create that as part of the law.

1050

That doesn't take away from the fact that if you create the 11 ridings in the north, they will have been created by a third party, arm's-length commission previously, and we're now saying that under this law we're going to keep those 11. That doesn't change the fact that to keep fairness and equity in place for all people in Ontario, and based on the principle of one person, one vote, that every vote counts and every vote counts the same, a commission could not look at changing the way we distribute southern Ontario to make it all equal.

The presentations we got from northern Ontario and from the people who presented suggested that they needed the lower population per riding; it was based on the ridings otherwise becoming too large. They didn't say that people needed more clout for their individual vote. They needed to be able to contact their member of Parliament and their member of the Legislature, and vice-versa: the member needed to serve all their population. That doesn't change the fact that we can create fairness in voting and value for votes by having a look at how we distribute southern Ontario.

Since we are going to keep northern Ontario in this bill, based on an electoral commission's report that was previously done by the federal commission, then at least we've had a third party look at that. I think we have to

balance that, because the commission that looked at them last time didn't look at them in isolation, northern Ontario to southern Ontario. So if you keep northern Ontario the same way, it's not a given that the commission would have changed southern Ontario to the way it's now being changed. We now have a total package in the province that will not serve the whole province well. From our party, we strongly support the principle of keeping the northern Ontario ridings the way they are, but we think it should be balanced with looking at the whole province as to how we could better serve all our people.

The other thing that was pointed out to us in presentations was the need to have a look at how we divide the province up to serve the Ontario Legislature and to serve the people of Ontario as opposed to the federal need, which is presently what we have. What we're going to have in southern Ontario, again, is the way the federal government's commission deems the best way to serve their needs, as opposed to the best way to serve Ontario's needs.

With that, I'll end there, I guess. That points out why we think it's necessary to have a third party look at it, and this schedule is the type and how we would set up that third party to meet the needs of the people of Ontario.

The Chair: Thank you. Ms. Churley.

Ms. Churley: Thank you very much. Let me officially apologize for being late. I had it in my schedule for 10:30 for some reason. Therefore, I didn't have the opportunity to make opening statements but this gives me an opportunity to say what I wanted to say anyway, because it has to do with what my opening statements might be.

First of all, let me say that I support the concept of an independent commission. In fact, I would submit that if a truly independent commission, and not the government making these decisions, did this work, there would be more seats for the north, not just one. As I said during clause-by-clause, it was the previous Tory government that made the decision to throw a bunch of chairs off a flatbed truck and say, "There are too many politicians wasting your money and we're getting rid of a bunch of them and we're going to go by the federal boundaries." That's what I said in my statement during clause-by-clause.

Now there's an attempt to try to fix some of that but only in the north. In saying that, I did not say that we shouldn't be attempting to fix it in the north. In fact, if we had an independent commission, I would. Let me repeat that there should be more seats in the north, because I understand the geography very, very well. I grew up in Labrador; I understand better than most, actually. I have to say that some of the northern members' misrepresentation of what I was trying to say smacked of—I'm trying to find a word that I can use in a parliamentary way.

Mr. Hardeman: Norm mentioned that.

Ms. Churley: Yes. It smacked of duplicity, I guess.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): The first time that's ever happened.

Ms. Churley: Yes, the first time. I would say that Mike Brown must be worried about his seat. He's certainly not going to get my vote—I'll put that on the record right now; he's running for Speaker—because he's proven himself to not be fit for that chair, given the misinformation that he put out about my statements here in this committee, suggesting that I didn't support further seats in the north, when I was trying to make the point, perhaps somewhat clumsily—

Interjection.

Ms. Churley: No, but Mike Brown as well, who did a particular story relating to me, completely misrepresenting what I said here; that is, that we do have to be concerned about the whole province, including the south. I represent a Toronto riding, and I'm going to tell you who else agrees with me and who would support an independent commission. Perhaps the two Liberal Mikes from the northern ridings didn't realize this, but I'm going to quote to you what another Mike—Mike Colle, who's now a minister of the Liberal government—said in the House in response to Bill 214, which, incidentally, I did vote for and which was also left out in the House. I have the voting record on that.

Here's what Mr. Colle said in the House. It's in Hansard:

"Anyway, I would just like to say that this bill"—he's talking about Bill 214—"doesn't really deal with some of the fundamental, core issues. One of the core issues I find is that you could put the provinces of Saskatchewan, Prince Edward Island, Newfoundland and Nova Scotia into the city of Toronto: again, Saskatchewan with 995,000; Prince Edward Island, 137,000; Newfoundland, 517,000; Nova Scotia, 937,000. We've only got 21 seats here. In those provinces, they've got about 200 members provincially.

"The previous government talked about how representation was bad. 'Too many elected officials; get rid of them.' The public needs good representation. The present system doesn't reflect the public's needs, never mind the geographic needs my friend talked about, which are real. There is also diversity. In the city of Toronto, you can go from street to street and there are totally different, dramatic needs. From the poor in the Jane Street corridor to Lawrence Heights in my riding of Eglinton—Lawrence to St. James Town, wherever you go, dramatic needs aren't being met with our present electoral system. It's really doing a disservice to democracy the way it's structured right now. Unless we start to come to grips with those problems of representation that exist not only in the north but that exist all over, it doesn't do democracy a good turn, the way we are looking at things right now."

That is not dissimilar to what I said during clause-by-clause in this meeting, where I was as a member representing my constituents in Toronto and in southern Ontario, while at the same time supporting changes in the north but talking about it looking at all the districts of Ontario and having a fair system for all. I support most of the submissions made to the committee about the need to

reconfigure the system right across Ontario, because what we're doing now, as has been pointed out, for instance, by Dr. Robert J. Williams, associate professor, department of political science, University of Waterloo—he says that "Bill 214 creates a system of representation that has no real coherence or consistency," and representation in the rest of Ontario will be "determined by calculations and principles embedded in the federal Electoral Boundaries Readjustment Act and the process for boundary revisions ... implicit in it. Therefore, the number of seats in the Ontario Legislative Assembly is dependent upon a calculation related to the population of the other provinces and not a determination of the constituencies needed to provide Ontarians with effective representation within their own ... political system," and so on.

We had some very intelligent and very good presentations at the public hearings, and indeed my comments were based upon those. Let me reiterate again that I agree with Liberal minister Mike Colle, that while we support the additional riding for the north, there needs to be fairness across the province. We have diverse communities here in Toronto. Academics and experts have been pointing this out, and, believe me, we will be hearing more about this. You're getting away with it for now, and Liberal members are getting away with accusing me, as a New Democrat, of not supporting the north, and that's a lot of fun; I understand politics. But I think it's fair to say that once this bill passes—because, in fact, I supported it, as did my caucus, in the last session, and we will again, with its flaws—we'll be looking to the government to take the next step and put in place a fair, independent process to determine boundaries across the province that is fair to everybody.

1100

As for this motion, the amendment before us today, I'm not sure at this point if I will support it or not, because it's literally a bill in itself. I certainly support the concept and I expect the Liberals will as well. If you do, I'll send the press release to the north. But I think you should. I think we would all agree that we need to look at a fairer system. What the Tories did was wrong and we need to fix it, but you can't isolate out parts of the province and leave Hamilton and Toronto and southern Ontario out. That's all I'm trying to say here. As for this amendment, it is really a bill unto itself, which I'd have to look more closely at and see if that is the best way to set up a commission at this point. It's too long and involved for me to make that decision here and now. Having said that, I certainly support a further process to allow an independent commission to look at the overall system across the province so that there's fairness for all.

The Chair: Thank you. Ms. Mossop?

Ms. Mossop: I think what we've had is a bleeding of arenas here, where the political discussion often takes place in the media, and a different tone and a different flavour in that arena is bleeding over to what has been really, on the whole, an incredibly constructive process. We've all heard the same sorts of things in committee

and public hearing, and we heard them as well. There was just excellent input in this area and discussion around this of issues that go well beyond even what you're proposing and discussing here. The problem, I guess, that we're running into is that there's not enough time, as Ms. Churley has pointed out, to deal with this. There isn't enough time to get a commission up and running and to make these sorts of decisions by the next election. There is the issue of whether or not following the federal lines, as happened under the previous government, is wise. So there really is a need for a fulsome discussion on this. How should Ontarians be represented in their Legislature? There are a lot of issues around it—so not in disagreement at all. Sorry about the bleeding of politics into this committee, because I think the work has been pretty constructive. We have heard some amazing things in the discussion, it's been excellent, and I think we need to continue on that. I think this is a good piece for the citizens' assembly and to move forward as a separate item. So my hat's off to both of you, and that's where we are.

The Chair: Thank you. Mr. Hardeman, one last word?

Mr. Hardeman: I just want to reiterate that I agree with Ms. Churley to some extent, and with Ms. Mossop as well, that we need to have a broader look at how we deal with this issue. The reason that this amendment is forwarded is because the only way we can see making the changing of the boundaries that we're going to see between now and the next election representative of what the people want, as opposed to what Queen's Park wants, is that you have to have some way to have an arm's-length commission to do that. That's why it's in here as a schedule. As mentioned, it should be a bill on its own. I'm not going to deny it should be a bill on its own, but I think the issue was brought up by Ms. Mossop about there not being time to introduce a bill and have it approved and have it apply now. It would seem, if it is the government's intent to look at a better way to do it to make sure that it's done fairly, then we would stay with what we have until we could do it properly rather than changing it and assuming that in the next three months, after they get through with the other select committee on the reform, we will again change the boundaries and deal with that again.

My concern is that this will be implemented and nothing more will be done on it because it was just completed. I think we can make this bill work properly by having a third party look at how the distribution should be done to accommodate not only the people in the north, but also the people in Toronto.

I think it's also important to recognize that this bill doesn't say that it's a maximum of 11 seats in northern Ontario; it's a minimum of seats in northern Ontario. As was suggested by Ms. Churley, if it wasn't the right number of seats, because of the demographics and the geography of northern Ontario, the commission could decide that. It only makes sure that the numbers do not go down for northern Ontario.

The Chair: Further comments? Mr. McMeekin had his hand up first.

Mr. McMeekin: I just want to comment briefly. In some respects, we're living between memory and hope here. It wasn't that long ago that the previous government took certain steps which, in hindsight, they perhaps see as being the wrong way to go. We celebrate those "aha" moments any time they occur. In that sense, I have some sympathy for my colleague Mr. Hardeman who's struggling to put a position that may be too strict a paradox: to insist that somebody else do something that they obviously couldn't do. To talk about balance to serve all our people I thought was interesting.

Ms. Mossop's reference to the citizens' assembly, I thought, was rather instructive. I think it's important that whatever happens down the road, it be seen to be unencumbered by political interest. In that respect, the citizens' assembly's perspective on this will be very helpful and hopefully a healthy one.

Particularly, Ms. Mossop, given the timeline concern that you've identified, it seems to me the best of both worlds when a government that pledges—as I understand the election campaign—to maintain the 11 northern ridings follows through with that while, at the same time, moving forward with a precedent that in the most significant respects was set by the previous government around boundaries consistent with federal ridings while, at the same time, building in the potential for some genuine objective citizen review and critique of both.

I think—and Ms. Mossop captured it rather well—we're in a very good position to do that, Mr. Chairman, with the pending citizens' assembly, which was, of course, reflective of the current government's desire to bring more transparency to that whole process.

We have to move on, obviously. We've got expectations out there in terms of ridings and what have you. We have made certain commitments to the north, but we've also made a commitment to a process that could have some pretty powerful impacts. I think Mr. Hardeman would agree with that. So we're down a path that some of us, on reflection, might not have wanted to go down, but, notwithstanding, decisions have consequences and we're moving forward with a very balanced perspective.

The Chair: Thank you. It was the Chair's intention to get a brief comment from each caucus, which has turned into two. So, Ms. Churley, would you like to have a second and final word on this?

Ms. Churley: Yes, sure. I appreciate the comments from the Liberal members.

Again, I just want to reiterate that I can't support this amendment before us. We do need to move forward with this and I'm supporting it today, as I did in the House, but I just want to say that I really do believe that we need to look—and there's going to be a whole process in place which I'm involving myself in and I have certain demands on how that should be set up and will want certain input into that. But I would have been happier had

this bill not cherry-picked out pieces, because that's one of the problems we have here.

I know there was some urgency to move on the northern riding and a few other priorities. As you know, I pushed for real-time disclosure, and I'm glad to see that, but what we really need, as some of our deputants said, is to re-establish the Ontario Legislative Assembly's right to determine the boundaries that work best for us as provincial politicians, not federal politicians, because, as has been pointed out, our responsibilities are very different. I think of Howard Hampton, who is mentioned a lot as the person with the biggest geographic area, and some of the northern members and the kinds of day-to-day issues that we are involved in—unlike, forgive me, my federal colleagues. Unlike our federal colleagues, the real issues that we deal with are much closer to home, so we should have the right, and I think we need to move back to a system where we establish what is best for our constituents at a provincial level. That's the kind of thing I want to move on to, looking at proportional representation and all of those things we've been talking about. But that is where I believe we have to determine our own destiny in terms of what's best for our own people at a provincial level.

The Chair: Thank you. The committee will recess for five minutes while the Chair consults with staff.

The committee recessed from 1110 to 1119.

The Chair: Can we please bring the committee back to order. The Chair appreciates the clarification and the explanation of schedule 1 by Mr. Hardeman, and certainly the comments and suggestions by Ms. Churley, Ms. Mossop and others.

After hearing the proposal for schedule 1 and hearing from the three parties, the Chair has consulted with our legislative counsel and the Chair has, after consultation, ruled the proposed schedule 1 to be out of order. While not passing judgment on the content or the value of schedule 1, on which we heard a broad range of opinion, legislative counsel echoes the feeling of the table that the schedule is beyond the scope of the bill sent to this committee by the House, which approved prior to sending the bill here the scope of the bill. In order to strike out a schedule and to substitute an entire schedule, the Chair is unwilling to enter into such a precedent. As such, schedule 1 is ruled out of order, and as such, Mr. Hardeman, your proposed amendment to subsection 4(1) should also, consequently, be out of order, as it depends on schedule 1.

Mr. Hardeman: Which amendment was that, Mr. Chairman?

The Chair: Page 19.

Mr. Hardeman: Mr. Chairman, that being just the title of the act, I have no problem seeing the same fate of the two issues. I am disappointed and personally in disagreement with the legislative counsel's decision that in fact this is out of order. But obviously I'm one person and you are another, and you have slightly more authority than I do, so I guess we'll have to accept the fact that you've ruled it out of order. I do not believe that

this changes the bill; I believe that it just provides another way of implementing the intent of the bill that was sent here, to make it more democratic. I just don't believe that that could be out of order, but if it is, we'll take your word for it.

The Chair: Thank you. Just to clarify, the decision to rule it out of order is the decision of the Chair, not that of legislative counsel.

While we are still considering schedule 1, while Mr. Hardeman's motion has been ruled out of order, shall section 1 of schedule 1 carry?

Mr. Hardeman: Could I ask for a recorded vote?

The Chair: Recorded vote. Those in favour of section 1 of schedule 1 as originally in the bill?

Ms. Churley: I thought we were deliberating as to whether or not it's in order.

The Chair: No, this is the original schedule 1, as in the bill.

Ms. Churley: Sorry. We were all confused.

The Chair: The proposed amended schedule 1 has been ruled out of order.

Ms. Churley: Let me put it on the record that all three parties were confused about what you were asking us to vote on here.

Ms. Mossop: That's right. But we're OK now.

The Chair: It in fact took the Chair a little bit of careful study to figure it out as well.

Section 1 of schedule 1: Those in favour?

Ayes

Churley, Kular, McMeekin, Mossop, Sergio, Wynne.

Nays

Hardeman.

The Chair: Section 1 is carried.

Section 2 of schedule 1: Are there any comments, questions or amendments?

Ms. Mossop: I move that paragraph 2 of subsection 2(1) of the Representation Act, 2005, as set out in schedule 1 to the bill, be amended by adding at the end, "subject to subsection (2.1)."

The Chair: Questions? Comments?

Mr. Hardeman: Could I have an explanation of what it does?

Ms. Mossop: This is actually something that we heard in committee about the names of the ridings provincially and federally lining up, so motions 17 and 18 are together. The effort is to make sure that the names line up federally and provincially to get away from the confusion. That's something we heard in the hearings the other day.

The Chair: Shall the amendment carry? Carried. Other amendments?

Ms. Mossop: I move that section 2 of the Representation Act, 2005, as set out in schedule 1 to the bill, be amended by adding the following subsection:

"Name changes

"(2.1) For the purposes of paragraph 2 of subsection (1), the following rules apply with respect to the names of southern electoral districts:

"1. If, as the result of a redistribution under the Electoral Boundaries Readjustment Act (Canada) that takes place after September 1, 2004, a new federal electoral district is established with the same boundaries as one of the 96 southern electoral districts, that southern electoral district is renamed so as to have the same name as the new federal electoral district.

"2. If a federal electoral district with the same boundaries as one of the 96 southern electoral districts is renamed by an act of Parliament that comes into force after September 1, 2004, that southern electoral district is renamed so as to have the same name as the federal electoral district.

"3. A name change under paragraph 1 or 2 takes effect on the same day as the establishment or renaming of the federal electoral district, unless the establishment or renaming takes effect during the period that begins on the day after the day a writ is issued for a general election or for a by-election in the southern electoral district and ends on polling day, in which case the change of name is postponed to the day after polling day."

The Chair: Questions and comments? Ms. Churley, you had your hand up first.

Ms. Churley: I support this, but I do have a question around it. I want to make sure I understand it. The question is based on an experience I had in my riding of Toronto-Danforth, which used to be called at one time, if you recall, Riverdale, and was changed to Broadview-Greenwood, all within my time in this place. After the Conservatives changed the boundaries to correspond with the federal boundaries without consultation with me, the member for the riding of Broadview-Greenwood, Dennis Mills, who was then the MP, changed the name at the Ottawa level to Toronto-Danforth. We just happened to find out about it because I have good staff who found out on a Web site that it was going on. There was no consultation, and we had no say in the change of the name.

Of course, the name was changed. It went through due process here in the Legislature, and we were able to get some money out of the Board of Internal Economy to help me pay for the new sign and the new letterhead and all that entailed. I don't think that this amendment deals with the name change.

Jack Layton, by the way, is now changing the name yet again—get ready for it—I think to Riverdale-East York-Danforth; those three names will be mentioned in it, which will then impact provincially again. I support it, by the way, because the people of East York and Riverdale were very upset about the change from Broadview-Greenwood to Toronto-Danforth without consultation with them after the amalgamation. It was a huge problem in the riding, so I support the change of the name once again, which will once again impact provincially, however, and will mean—well, since I'm leaving soon anyway, I guess it'll correspond that a new

sign and letterhead will have to be done by the member. But that is an interesting question to put forth: how we're going to address this issue of federal members changing the name, as in some cases, without proper consultation.

Ms. Mossop: This isn't actually going to be an issue until after the next provincial election because we don't have our boundaries matching up yet. However, I think perhaps that it again will be part of the discussions for the citizens' assembly, because that gets into the issue of boundaries as well.

Ms. Churley: I just wanted to put on the record that it does complicate things.

Mr. Hardeman: I guess my question is somewhat the same as Ms. Churley's. Because of the date of September 1, 2004, it means that this just extends and that all the changes made in the last redistribution will now also be changed in name for Ontario ridings. Is that right?

Ms. Mossop: After the next election, because the boundaries aren't changing until—well, after the redistribution. So it won't take effect until the redistribution.

Mr. Hardeman: What I'm talking about is that the name change has taken place federally already.

Ms. Mossop: Yes.

Mr. Hardeman: So the same thing couldn't happen where all of a sudden, for whatever reason, the federal government decides to change the name of a riding and then ours is automatically committed to change, according to this.

Ms. Churley: Yes, it still would be.

Mr. Hardeman: I guess my question would be, why would the government want to do that? My riding has had the same name for 100 years and just because somebody at the federal level doesn't like it any more, they change it to something else. Why would that automatically make it acceptable to us?

Mr. McMeekin: That's what you did when you were in government. You did that in government; that's exactly what you did.

Mr. Hardeman: No, but why does this have to be there, then, if it's already done? You can't suck and blow at the same time. It's one way or the other. Either it's not done and you're doing it or it is done and you don't need it.

Ms. Mossop: We are actually being consistent from the standpoint of the constituents. This is something for the constituents, to make it a little easier for them to follow this ball as these changes have started, as the member noted, previously, and as we carry on forward, so as to keep it consistent until we can deal with this in a larger way with the citizens' assembly.

Ms. Churley: Can I ask another question? This refers specifically to southern districts. What about northern Ontario?

Ms. Mossop: That's a good—I need to consult, sorry.

The Chair: Sure. Shall we consider the amendment?

Mr. Hardeman: Recorded vote.

Ms. Churley: Can I hear an answer to my question?

Ms. Mossop: Yes. It's because the boundaries aren't changing in the north, so they are not going to be

consistent, so they won't be following the federal boundaries.

The Chair: Mr. McMeekin, you get absolutely the last word here.

Mr. McMeekin: My riding is affectionately known as "ADFA" at the moment. Yours with the R-E-D will be affectionately known as "RED," which is our colour, isn't it?

Interjections.

The Chair: You might start it with "Greenwood-Riverdale" something or other.

OK. Those in favour of the amendment?

Ayes

Churley, Kular, McMeekin, Mossop, Sergio, Wynne.

Nays

Hardeman.

The Chair: I declare the amendment carried.

Shall section 2, as amended, carry? Carried.

May I have the committee's permission to consider sections 3, 4, 5 and 6 of schedule 1 in a block? OK. Shall sections 3, 4, 5 and 6 carry? Carried.

Shall schedule 1 of the bill, as amended, carry? Carried.

Moving back to section 4, the only amendment tabled, Mr. Hardeman, was the one that the Chair has ruled out of order. May I have the permission of the committee to consider sections 4, 5 and 6 of the bill as a block?

Mr. Hardeman: Recorded vote.

The Chair: Is that permission to consider them as a block? OK. Shall sections 4, 5 and 6 of the bill carry?

Ayes

Churley, Kular, McMeekin, Mossop, Sergio, Wynne.

Nays

Hardeman.

The Chair: I declare the sections carried.

Shall the title of the bill carry? Carried.

Shall Bill 214, as amended, carry?

Mr. Hardeman: Recorded vote.

Ayes

Churley, Kular, McMeekin, Mossop, Sergio, Wynne.

Nays

Hardeman.

The Chair: Shall I report the bill, as amended, to the House? Carried.

Thank you very much for your time today, ladies and gentlemen. The committee is adjourned.

The committee adjourned at 1134.

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